

## ***Davis Bacon Act Q & A Applicable to DHEEP***

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***Note: This is an amended list of Davis Bacon Q & A, applicable to DHEEP, however, the city encourage you to read the entire Q & A list in its entirety ( if you prefer). The city will not be held responsible for not reading DBA information not included in this document. This document was compiled as a courtesy to Participating contractors but should not serve as a comprehensive Q&A list. The complete Q & A list can be found at [http://www1.eere.energy.gov/wip/pdfs/dba\\_faq\\_list.pdf](http://www1.eere.energy.gov/wip/pdfs/dba_faq_list.pdf).***

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### **Q & A**

**I'm still a bit confused as to whether Davis Bacon applies to our City's Weatherization Program. We are providing assistance to individual homeowners for energy efficient gas furnaces, hot water tanks and/or insulation. All contracts will be between the contractor and homeowner. The City will be putting the contracts out to bid and managing the process. Contracts may be over \$2000 depending what is done. Does Davis Bacon kick in? (I was under the impression that contracts with individual housing units weren't an issue unless there were more that 8 units in the project).**

Answer: The \$2,000 threshold for DBA is based upon the grant the city receives. As a result, the grant is subject to the DBA and all work under the grant is subject to the DBA, unless an exception/exemption applies to the program.

The program you have described will be subject to the DBA, because the City is putting the contracts out to bid and managing the process. The city may develop a list of contractors that the individual homeowners may choose from and allow the homeowner to contact contractors from the list and have two or three bid on the energy equipment and upgrades, and then the individual chooses from those bids who they want to perform the work or provide the equipment. However, if the city puts out the contracts and manages the process then the city and the contractors will be subject to the Davis-Bacon Act requirements. The city could set up a voucher system where the homeowner obtains a voucher from the city and after the work is done signs the voucher over to the contractor. The contractor could then submit the voucher for payment to the city. However, based upon the information provided, it appears the city is doing the contracting rather than the individual. The DBA will be applicable to the program when the recipient or subrecipient enters into a contract to provide installation services.

The only exception/exemption from DBA for contracts with regard to individual housing units is where the individual owner is receiving the rebate, grant, or loan. If a business owns the individual housing units – even where there are less than 8 in a project – the DBA is applicable.

**If a City will be using some of their EECBG funds to subsidize residential energy audits, are the energy auditors subject to the DBA if the resident chooses the auditor?**

Answer: The DBA applies to laborers and mechanics employed at the work site. Energy auditors, inspectors, and other personnel not performing physical or manual work at the site of the work are not covered by DBA.

### **Contractors Who Own the Business but also Perform Labor**

**Does a self-employed contractor need to complete and submit DB payroll forms weekly, indicating on them that he has paid himself at least the prevailing wage? If so, what happens when the contractor is part way through the project and realizes that he under-bid, and his policy is to not change the contracted amount. In other words, he guarantees that he will only charge \$xx for the job, no matter how long it takes him. Now he is not compliant with DB for the remainder of the project.**

Please see answer below.

**If the owner of a private company is self-performing labor, on an EECBG project & public building, are they required to pay themselves prevailing wage?**

Please see answer below.

**What about a small business owner who owns the business and also does the work.....Do they pay themselves based on the Davis Bacon rates?**

Answer: A **business owner** who is the contractor and works with his/her employees, is not required to pay him/herself DBA wages. Bona fide owners who are exempt pursuant to Department of Labor regulations, found at 29 CFR Part 541, are not laborers and mechanics and are not subject to the DBA. DOE recommends that owners of a business who also perform construction work list themselves on the certified payroll and under the column for "Work Classification" insert the word "owner." The owner does not have to put in his/her hours or wage rate.

If the business owner is a **sole proprietor**, the contracting entity must determine that the person they are contracting with is truly a bona fide sole proprietor of a company. The contracting entity must maintain a record of the company Federal Tax ID number and a copy of the business license in the contracting file. Additionally, prior to awarding the contract, ask whether the sole proprietor plans to hire anyone to assist with the work – as those hired workers will be subject to the DBA. If the sole proprietor is not going to hire anyone, the owner is exempt from DBA and there is no requirement for certified payrolls.

Workers classified as **independent contractors or “1099 workers”** are covered by the DBA and must be paid the DBA wages and listed on the contractor’s certified payroll record.

**NOTE: If the grantee/subgrantee hires an individual who is “self-employed”, but not a**

**“sole proprietor”, the grantee/subgrantee must pay the independent contractor the DBA wages and complete the certified payroll.**

**Individuals are not subject but a corporation/partnership would be? Since both of these would be considered a legal entity?**

Answer: Individuals who receive Recovery Act funding and subsequently contract for energy savings improvements are not subject to the DBA requirements. All other legal entities such as corporations/partnerships who receive Recovery Act funding are subject to the DBA when they enter into a contract for construction.

**Did you say the 1413 goes out to all sub-recipients and sub-contractors?**

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

**When you say digital signatures are you talking about adding a digital signature in a completed pdf form of WH-347 or the electronic payroll form?**

Answer: A digital signature is only available through an electronic payroll system. If you complete the WH-347 on line, it must be printed out and hand signed. Once the Wh-347 is in paper form, then it remains in paper form and the original certified payroll must be sent to the recipient of the grant.

**We are in the process of conducting workshops regarding our SEP/ARRA program's Solar Installation Grants. As you can imagine, we have received numerous questions regarding the application of DBA. We are uncertain of the answers to the following questions: (1) Primary Contractor is a solar company with two owners. Subcontractor is an electrical contractor with two owners. The only labor used on the job is the 4 owners. The owners are not considered employees. Their income level is completely dependent on the profitability of the company. As a result they might not even get a regular paycheck. Since they are not considered employees, it is our understanding that the owners are not required to pay themselves DBA wages. Is that correct? If so, must the company still generate a weekly certified payroll? (2) If a Contractor / Subcontractor does not typically provide his employees fringe benefits, will he/she be in compliance with DBA as long as the cash equivalent of the required fringe benefits is paid? See 29 CFR 5.5 - Contract provisions and related matters.**

Answer:

(1) A business may have more than one owner. When those two owners perform all the work they are not required to pay themselves DBA wages. Bona fide owners who are exempt pursuant to Department of Labor regulations, found at 29 CFR Part 541, are not laborers and mechanics and are not subject to the DBA. Where the two owners perform all the work, there is no requirement for completing the certified payrolls. NOTE: It is the responsibility of the grantee/subgrantee hiring the owners to have information in the file showing that the workers on the project are actually bona fide owners of the business. This can be shown through the Articles of Incorporation or Business Registration documents.

(2) A contractor/subcontractor is not required to offer employees fringe benefits. The fringe benefit requirement is met when the contractor/subcontractor pays the employee the required amount of fringe in cash.

### **Dating of Wage Rates and Contract Signing Dates**

**You should clarify that if contracts are already in place, that the DBA wage that was applicable that moment in time may still be used.**

Answer: A contract that is currently in effect and subject to the DBA should be using the DBA wage determination that was current on the date the contract was signed.

**What contract date locks in the DOL wage determination? Is it the grantees contract with DOE, the grantees contract with the sub-grantee, or the sub-grantees contract with the contractors? Will all contracts under the grantees contract be held to the same wage or will it constantly be changing with each new job that starts?**

Answer: **For EECBG program grants**, the date the grantee or sub-grantee contracts with a contractor will be the date that the DOL wage determination is locked in for that contract. The wage determination may change with each new project and contract start."

**If the project lasts for some 'length' of time, is the original WD in effect for the entire project length or are we obligated to update the WD on some periodic basis?**

Answer: The Wage Determination (WD) attached to the contract is effective for the entire project length and there is no requirement to update the WD.

**Contact information requested for employees of the DOL please.**

Answer: For the local office nearest you, please use this website for contact information:  
<http://www.dol.gov/whd/america2.htm>

**Is documentation required if grantee and contractor determine that D-B wages do not apply to the project?**

Answer: The only authorized person to make a determination as to whether DBA applies to a specific project under a Recovery Act-funded grant is the DOE Contracting Officer. The grantee and contractor are not authorized to make such a determination. For a decision as to whether DBA is applicable to a specific project, contact

**It is my understanding that Line 16 on the SF-1444 should be signed by an employee working in the Job Classification that is being requested. Is this your understanding?**

Answer: Yes. If present, employees or their designated representative **must sign block 16** noting their concurrence or disagreement with the contractor's proposed wage and benefit rate. If the employee indicates disagreement with the contractor's proposal, he must provide a statement supporting a recommendation for different rates. ("Designated representative" is generally a union. It cannot be the contractor's personnel officer or other contractor representative.)

**Does DOE have a standard employee interview form (like the HUD-11 form)?**

Answer: DOE has no standard employee interview form like the HUD-11 form and neither does the DOL. DOE has posted an example of a form on the website with these answers to the webinar questions. The form is in word format, so you may use it or change it to fit your needs. There is no requirement for a form or how the interview should be set up. When completing the employee interview, only ask the employee for the last four digits of his/her Social Security Number.

**Is the subcontractor sufficient to sign for his workers or does it have to be each person individually?**

Answer: The subcontractor should sign the certification that the subcontractor paid his/her employees the wages as set forth in the form. are unable to provide an answer, because we do not understand the question.

**On the newest WH-347 block 1 no longer requires the address of the employee. Are the contractors no longer responsible to report employee's addresses?**

Answer: Contractors are no longer responsible for reporting the employee's address on the certified payroll. On December 19, 2008, the DOL issued its Final Rule, 73 FR 77504, entitled, *Protecting the Privacy of Workers: Labor standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction*. This Final Rule (the Rule) revised its regulations issued pursuant to the Davis-Bacon and Related Acts and the Copeland Anti-Kickback Act to better protect the personal

privacy of laborers and mechanics employed on covered construction contracts. The effective date of the Rule was January 18, 2009, and changed the regulations at 29 C.F.R. 5.5(a)(3)(i), (ii). The DOL decided that weekly certified payrolls no longer require complete social security numbers and home addresses for individual workers and that not including such information would better protect the personal information of the workers. As a result, 29 CFR 5.5(a)(3)(ii)(A) specifically provides that the submission of the certified payroll "shall set out accurately and completely all information required to be maintained under 29 CFR 5.5(a)(3)(i), **except that full social security numbers and home addresses shall not be included on weekly transmittals**. Instead the payrolls shall only include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number)." However, the contractor must maintain a record with the full social security number and home address, should an audit become necessary, but that information is no longer to be submitted on the weekly certified payroll.

**So if government agency obtains a grant, then does the agency need to do anything specific for compliance with DBA requirements other than obtaining Certified Payroll from the contractors and does routine random check of the employees of contractor for compliance, etc.?**

Answer: The local state government agency that receives an SEP or EECBG program grant must make sure that the Davis-Bacon Act clauses are incorporated into the contracts with the appropriate wage determination for the work that is to be performed. Once the work begins, the contractor will submit the certified payrolls to the local state agency and that agency must make sure that the wages have been paid properly. The local state agency is required to assure that all supporting documentation is submitted by the contractor for fringe benefits or for apprenticeship/trainees. Additionally, the local state agency is expected to perform some site inspections and employee interviews. If the certified payrolls contain mistakes, it is the responsibility of the local state agency to notify the contractors and have the corrections made and any back wages paid to the workers, if necessary. You can find additional information on the EECBG/SEP FAQ website:

[http://www1.eere.energy.gov/eere\\_faq/default.aspx?pid=10&spid=1](http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1).

**• We have a prevailing wage ordinance, which is based on State DOL. We require all projects to comply. But, we don't collect weekly payrolls. However, with the HVAC installation issue (no building modifications, duct work), how much is 'incidental'? If some duct work, but not a lot, do we still have to collect the certified payrolls?**

Answer: Recipients and subrecipients must comply with State and Federal DBA requirements. The contractor/subcontractor must complete weekly certified payrolls and submit them to the recipient/subrecipient. The recipient/subrecipient is required to collect and maintain the weekly payrolls.

Each specific contract/loan/grant must be reviewed on a case-by-case basis for a determination as to whether the installation of equipment is covered by the Davis-Bacon Act. The Davis-Bacon Act includes “altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site.” 29 C.F.R. 5.2(j)(1)(i). Where a Recovery Act-funded grant includes funding for both the purchase of equipment and installation, and installation requires substantial amounts of construction, reconstruction, alteration, or repair work (as compared to being incidental to the purchase of equipment), the DBA would be applicable. Factors to be considered in determining whether installation requires substantial amounts of construction include the extent to which structural modifications to buildings are needed to accommodate the equipment (i.e., widening entrances, relocating walls, or installing electrical wiring), and the cost of the installation work - either in terms of absolute amount or in relation to the cost of the equipment and the total project cost. For a definitive decision on whether the DBA would apply to the installation of the HVAC equipment, please contact the Contracting Officer or Contracting Specialist listed on the recipient’s grant.

**• In our weatherization program, the homeowner selects the contractor from our approved list, and submits the invoice to us when the work is done. We then pay the invoice. Do we have to collect certified payrolls?**

Answer: No, you will not have to collect certified payrolls in this situation. The program is set up such that the individual homeowner contracts with the contractor to perform the work and receives the invoice from the contractor. This program is not subject to DBA, because individuals are exempt from the Recovery Act DBA requirements.

**• Is it acceptable for the contractor weekly payroll to be bundled and provided to the grantee on a monthly basis?**

Answer: No, it is not acceptable to bundle payrolls. A contractor bundling the weekly payrolls and forwarding on a monthly basis would be in violation of the DBA requirements. The DOL Regulations at 29 CFR § 3.4 specifically state: “(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency. . .” The DOE through contract clause has designated the Recipient of the grant as the entity to receive the original weekly payrolls.

**When a wage changes, regardless if it's in the middle of a project, the payroll should reflect the rates immediately. Correct?**

Answer: No, once a Wage Determination is incorporated into a contract the wage determination remains effective for the entire length of the contract even when DOL subsequently revises its general wage determinations.

**• Is it a requirement to conduct employee interviews? I saw that it was mentioned in the webinar this morning.**

Answer: It is a recommendation, not a requirement. The subgrantee should perform at least one onsite visit per contractor to assure that the contractor/subcontractor is properly complying with the DBA requirements.

**I have been working with the DBA for 14 years and have always been told that OT is paid after 8 hours/day. In today's morning webinar, Eva said OT kicks in after 40 hours/week. Can you get clarification?**

Answer: The Department of Labor (DOL) regulations require only that overtime (OT) be paid after 40 hours in a week. State law may require payment of OT after 8 hours in a day, but DBA has no such requirement.

**How is "laborer" defined, and how do we distinguish "laborers" from "non-laborer" workers?**

Answer: The DOL defines “Laborer or mechanic” at 29 CFR § 5.2(m) as follows:

“The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, . . . The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a

bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.”

**• How do you get a wage classification if the wage determination doesn't have a particular wage classification, i.e., HVAC technician?**

Answer: You must go through the conformance process using Standard Form (SF) -1444. The process is set forth on the DOL website at: [http://www.wdol.gov/db\\_confirmnce.aspx](http://www.wdol.gov/db_confirmnce.aspx).

**• Does Davis-Bacon apply to the installation of HVAC that doesn't include any construction or building modifications at all?**

Answer: It is possible, where there is no construction or building modifications at all, that the installation would be incidental to the purchase of the HVAC unit. However, a determination of DBA applicability must be made on a case-by-case basis by the Contracting Officer.

**Does prevailing wage pertain to consultants, architects or engineers?**

Answer: The DBA does not apply to energy auditors, consultants, architects, or engineers working on a project.

**Does this wage apply to the auditors as well as the weatherization workers?**

Answer: The DBA does not apply to energy auditors or other auditors. The DBA does apply to the weatherization workers.

**Does the Public Agency have to post the wage rate in the Invitation for Bid or simply list the link to the DOL? Is it the Public Agency's responsibility or the Contractors?**

Answer: The Public Agency must inform the potential bidders that the work will be subject to the DBA and may either attach the wage decision in the bid documents or incorporate it by reference to the appropriate website ([www.wdol.gov](http://www.wdol.gov)).

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**When you say digital signatures are you talking about adding a digital signature in a completed pdf form of WH-347 or the electronic payroll form?**

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**Does DBA apply for Energy Audits - Residential or commercial (NOT RETROFITS).**

Answer: DBA is not applicable to energy auditors; therefore, energy audits are not subject to DBA.

**Solar Installations**

**Does Solar Panel installation fall under DBA?**

Answer: Yes, solar panel installation would be subject to the DBA.

**Is DOL planning on releasing wage rates for PV installers?**

Answer: DOE has not received any indication from the DOL that it is planning on performing wage surveys for the new classification of PV installer. However, if this becomes a much requested classification through the SF-1444 Conformance process, it may be possible that DOL will update its current classifications to include a PV installer.

**We are having a contractor install Solar PV panels. Is there a special worker classification for Solar PV installer, or is this under the classification of Electrician?**

Answer: Currently there is no special worker classification for Solar PV installer. All individuals performing this work should be paid at the most appropriate classification, possibly depending upon local code, as to qualifications for solar installation (carpenter, electrician, etc.), in accordance with the applicable residential or building construction wage determination.

**Grantee and Contractor Classifications (e.g. vendor vs. subrecipient)**

**Can the speakers distinguish the difference between a vendor and subrecipient? Is a vendor also a subrecipient? The differences are very confusing. Please give us examples. Thank you!**

Answer: A vendor is the entity providing a service or product associated with the project you are undertaking. An example of vendors would be Home Depot® and Lowes® and they provide products for use at the project site. On the other hand, the recipient is the entity who actually receives the Federal grant and is responsible for implementing the agreement and meeting any performance goals associated with the grant.

**Working with DOE**

**How do we determine who our DOE Contract Officer is?**

Answer: Your assigned DOE Project Officer can tell you. Please contact your Project Officer directly or through your grantee.

**You have used a lot of acronyms - can you define these: SEP, WAP, EERE, etc.**

Answer: SEP is the DOE State Energy Program; WAP is the DOE Weatherization Assistance Program; EERE is the DOE Office of Energy Efficiency and Renewable Energy; DBA is the Davis-Bacon Act. For additional information, please visit the DOE web site at: <http://www1.eere.energy.gov/wip/index.html>

**Who should determine the laborers needed for a project?**

Answer: The most appropriate person to make such a determination is the contractor/subcontractor. It is possible that the project planner or project manager could assist with such a determination.

**Please repeat where we can see the payroll seminar.**

Answer: Please visit the DOE web link at: [http://www1.eere.energy.gov/wip/davis-bacon\\_act.html](http://www1.eere.energy.gov/wip/davis-bacon_act.html)

**Can teaching contractors how to do proper payrolls and providing technical assistance on how to comply with all of this be considered EECBG Program Costs?**

Answer: Yes, this is an allowable cost under all OWIP Programs, WAP, SEP and EECBG. Please contact your respective Project Officer to determine the most appropriate category to charge these cost.

**On the Q&A, can you start putting a date so that we can go on daily and just look up the new Q&A's?**

Answer: We will work with our IT personnel to determine the best method of tracking these questions by the date they were answered and posted.

**How can grantees get a hold of more updated "prevailing wage reports" to include in our contractor agreements? I just have the original report included in my grant agreement (from 9/09) and have heard that we are required to use the most recent versions.**

Answer: Please go to the DOL website at: [www.wdol.gov](http://www.wdol.gov) to obtain the most recent prevailing wage determination for your state and county.