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Davis-Bacon Wage Determinations, Conformances, and Application of Multiple Wage Determinations



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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Davis-Bacon Wage Determinations

Presentation Overview

- Federal Agency Responsibilities
- General Wage Determinations (WDs)
- Project Wage Determinations (WDs)
- Selecting the Proper WD
- Application of Multiple WDs to a Project
- Interpreting WDs

Federal or Funding Agency Responsibilities

- Ensure the proper WD is identified and applied;
- Advise contractors which schedule of rates applies to various construction items; and
- Advise contractors regarding the duties performed by various crafts in the WD.

General Wage Determinations

- Issued for most counties for each major type of construction nationwide
 - Construction Types: building, heavy, highway, and residential
- Official site for General WDs is sam.gov
- May be used by Federal agencies without notifying the Wage and Hour Division

Project Wage Determinations

- Issued at the request of the Federal agency
 - No General WD in effect
 - Virtually all work on contract is performed by a classification not listed on the General WD
- Standard Form (SF) 308 is used to request a Project WD
- Applies to a specific project only
- Effective for 180 days

Categories of Construction Projects

- “The minimum wage shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on *projects of a character similar* to the contract work” in the locality where the work is performed.” (40 U.S.C. 3142(b))
- WHD has identified four general categories of construction: Building, Residential, Highway, and Heavy
 - See AAM130

Building Construction

- Construction, alteration, or repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies
- Includes all construction of such structures, the installation of utilities, and the installation of equipment both above and below grade
- Structures need not be “habitable” to be building construction
- Installation of machinery or equipment does not generally change the project’s character from building

Residential Construction

- Construction, alteration, or repair of single family homes or apartment buildings of no more than four stories in height
- Includes items such as site work, utilities, etc.

Residential Construction: Determining Height First Floor

- The lowermost floor counts as the first story when:
 - It contains the main entrance to the building
 - It is used for apartment space in a way substantially similar to the upper floors
 - It is primarily above ground on two or more sides
 - It is primarily above exterior grade on one or more sides and contains at least 50% living accommodations or related non-residential uses
- Stories below grade used for storage, parking, mechanical systems, or equipment, etc. are considered basement stories which are not used in determining a building's height

Residential Construction: Determining Height Top Floor

- The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height
- A half-story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below would bring the building above four stories.
- An attic is unfinished space located immediately below the roof. Such space is not used in determining a building's height even if it is used for storage purposes

Highway Construction

- Highway projects include the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects.

Heavy Construction

- The “other” category – projects that are not properly classified as either “building”, “highway”, or “residential”
- Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. Examples include dredging, water and sewer lines, dams, major bridges, and flood control.

Multiple Wage Determinations on a Project

- Only arises when a project includes construction items that *in and of themselves* would be in a separate category of construction
- In determining whether a construction item would be in and of itself a separate category of construction, the nature of the construction item/project itself is considered

Selecting and Incorporations Proper WD Construction types and AAMs 131 and 236

- Application of multiple wage schedules is explained in AAMs 131 and 236
- Separate construction types and
 - At least 20% of the total project is a different type of construction; and/or
 - The different type of construction is at least \$2,500,000 in cost

Applying Multiple Wage Determinations

- Once it has been determined that a project has construction work that is in and of itself a separate category of construction, the next point to consider is whether the cost of the work involved is substantial
- The cost is generally considered substantial if it exceeds 20% of the overall cost of the project or is over \$2.5 million
- If there is a substantial amount of construction in a separate category, multiple wage determinations will be applicable

Applying Multiple Wage Determinations (cont.)

- If the cost is not substantial, it must then be determined whether the work is incidental in function to the overall project
- If the construction that in and of itself is within a separate category *is not* substantial in cost and *is* incidental in function, one wage determination applies
- If the construction is neither substantial in cost nor incidental in function (i.e. a small separate project included in the same contract for convenience), two wage determinations would still be issued.

Referring Questions to WHD

- When referring a question about wage determination applicability to WHD, contracting agencies should provide the following information:
 - A complete and accurate description of the project
 - Where multiple schedules may apply, the major segments of the project and a cost break-down for the construction items involved
 - Evidence of area practice submitted to the agency by interested parties
 - The agency's recommendation as to applicability

A photograph of construction workers on a scaffolding structure. The workers are wearing safety gear, including hard hats and high-visibility vests. They are surrounded by wooden beams and metal scaffolding. The background shows a cloudy sky. A dark blue banner with yellow text is overlaid across the middle of the image.

Selecting Wage Determinations

Selecting Current Wage Determination

- Incorporate the most current WD
 - Negotiated contracts (“RFPs”): time of award
 - Competitively bid contracts: in effect 10 days or more before opening of bids
 - Exceptions

Extension of General WD

- Contract not awarded within 90 days of bid opening
 - Any modification to the wage determination must be incorporated into the contract up to award *unless* the Federal agency requests and obtains an extension of the 90 day period

Correcting the Wage Determination in a Contract

Issuance of WD after contract award or start of construction

- Failure to incorporate a WD into the contract
- Use of a WD that did not apply to the contract
- Incorporation of wrong WD into the contract

Correcting Wage Determination Errors

- Clerical error in wage determination
- Letter of Inadvertence correcting the error will be issued by the Department of Labor
- Corrected wage determination to be included in contract retroactively

Interpreting General Wage Determinations: Cover Sheet

- Decision number (supersedeas)
- State
- County/Counties or City/Cities covered
- Type of construction
- Description of Construction
- Record of Modifications

General Wage Determination Cover Sheet: Decision Number

Decision Number (Supersedes)

- Annual publication for General WDs
- Replace prior WDs
- WD numbers reflect new year

General Wage Determination Cover Sheet: Locality and Construction Type

Locality

- State
- County

Construction type

- Building, Heavy, Highway, or Residential
- Description of construction
 - May have include and exclude language

General Wage Determination Cover Sheet: Construction Type Language Examples

- **HIGHWAY CONSTRUCTION PROJECTS** (does not include building structures in rest area projects)
- **HEAVY CONSTRUCTION PROJECTS** (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks industrial construction-chemical processing, powerplants, and refineries)
- **BUILDING CONSTRUCTION PROJECTS** (does not include single family homes & apartments up to and including 4 stories)
- **RESIDENTIAL CONSTRUCTION PROJECTS** (consisting of single family homes and apartments up to and including four stories)

General Wage Determination Cover Sheet: Modifications

Record of Modifications

- List of all modification of the WD
 - Results of new survey
 - Update union rates

General Wage Determination Cover Sheet: Example

General Decision Number: LA170002 01/20/2017 LA2

Superseded General Decision Number: LA20160002

State: Louisiana

Construction Type: Heavy

Counties: Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St Landry, St Martin, Terrebonne, Webster and West Baton Rouge Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/06/2017
1	01/13/2017
2	01/20/2017

General Wage Determination Body: List of Classifications and Rates

List of classification and rates

- Basis for rates: Identifiers
 - Union Identifiers
 - Survey (SU) Identifiers

General Wage Determination Body: Union Identifiers

Union identifiers - **ELEV0101-001 10/01/2017**

- Elevator Contractors: International Union
- Local 101 – Local union number
- 001 – internal processing number
- 10/01/2017 – Date the rate became effective on the CBA

General Wage Determination Body: Union Identifier Example

CARP 0055-001

11/01/2016

	Rates	Fringes
• Carpenter (Acoustical Ceiling Installation, and Dry Wall Hanging Only)	\$26.25	\$8.64

CBA rates are updated when CBA rates are changed

General Wage Determination Body: Survey Identifiers

SU (Non-Union) Identifiers

SUCO2015-015 07/31/2015

SU: Survey Basis of Rate(s)

CO: Colorado

2015: Date of Survey

015: Internal Numbering

*** SU rates remain unchanged until new survey**

General Wage Determination Body: Survey Identifier Example

SUCO2015-015

07/31/2015

	Rates	Fringes
Bricklayer	\$21.96	\$0.00
Carpenter	\$18.22	\$0.00

General Wage Determination Body: Union Average Rates

UAVG- Union Weighted Average Identifiers

UAVG-CO-0016	01/01/2016	
	Rates	Fringes
Operator: Bulldozer.....	\$37.85	\$22.72

A UAVG rate prevails where 100% of the data reported for the classification is union data but because more than one union performed the work in the classification in the locality, no single majority prevailed.

UAVG rates are updated annually



Conformances

Conformance Process

In limited circumstances, when there is no appropriate labor classification on the applicable general wage determination, WHD may add or “conform” a new class of laborer or mechanic and a wage rate to a published wage determination for a specific contact. A conformance may only be granted when certain criteria are met.

Determining if a Conformance is Needed

- Compare labor classifications on the wage determination with the anticipated work to be performed
 - Conversations between the contracting agency, contractors, and WHD will help identify any potential missing labor classifications
- The scope of work performed by a labor classification will depend on local area practice.
- When the type of worker that performs the work needed on your project is listed on the general wage determination, you should *not* request a conformance

When to Request a Conformance

- After reviewing the wage determination and identifying a missing labor classification needed to perform the work
- Laborers and mechanics are required to be paid the prevailing wage for the labor classification of work actually performed
 - Wanting to pay a lower wage rate rather than the prevailing wage listed is not grounds for a conformance request

Criteria for Conformance Actions

- The work to be performed by the proposed classification is not performed by a classification already in the WD; and
- The proposed wage rate must bear a reasonable relationship to the rates in the WD; and
- The proposed classification is utilized in the area by the construction industry.

Reasonable Relationship

When determining whether a proposed rate bears a “reasonable relationship” to wage rates in the WD:

- Determine the category of the classification in question (skilled craft, laborer, equipment operator, or truck driver)
- Determine whether the majority of the rates in that category are union or non-union rates
- Consider the entirety of those rates and determine whether the proposed rate is reasonable in light of those rates
- Do not automatically use the lowest rate in the category

Reasonable Relationship Example

Based on the following, does the proposed hourly rate of \$20.99 plus \$10.04 in fringe benefits (\$31.03 in total) for a skilled craft bear a reasonable relationship to the rates on the WD?

Classification	Sector	Basic Hourly Rate	Fringe Benefit	Total
Carpenter	Union	\$26.06	\$10.56	\$36.62
Cable Splicer	Union	\$28.62	\$12.98 + 3%	\$42.46
Electrician	Union	\$28.37	\$13.98	\$42.35
Ironworker	Union	\$31.09	\$19.60	\$50.69
Cement Mason/Concrete Finisher	Survey	\$20.22	\$7.98	\$28.20
General Laborer	Union	\$21.04	\$9.65	\$30.69

Unnecessary Conformance Actions

Conformance requests are not needed for bona fide

- Apprentices
- Trainees
- Welders

Conformance Process: Contracting Agency and Contractor

Pre-Bid/Pre –Award

- Review the WD
- Compare the WD with the project work
- Anticipate needed classifications
- Apply key criteria

Conformance Process: Contractor

After-Award

- Identify needed classifications
 - At the pre-construction conference
 - From certified payrolls
- Advise agency of the needed classification
- Complete contractor part of Standard Form (SF) 1444
 - Apply conformance key criteria
- Forward SF-1444 to agency for review, signature, and submission to WHD

How to Appeal Wage Determinations and Conformances

Has an initial determination been made on a:

- Published WD
- Wage survey
- Letter setting forth a position
- Conformance determination

Initial Contact: Appeals

Initial contact on survey related matters should be directed to the Branch of Wage Surveys (BWS)

Initial contact on WD and/or Conformance actions should be directed to the Branch of Construction Wage Determinations (BCWD)

Review and Reconsideration

Request to the WHD Administrator

- In writing
- Include supporting data

Response or notification of needed additional time within 30 days

Final Rulings

A final ruling will be issued by the WHD Administrator

A final ruling may be appealed to the Administrative Review Board (ARB)

Administrative Review Board (ARB)

The ARB issues final agency decision on behalf of the Secretary of Labor

- Requests for review of Wage Determinations must be timely (29 C.F.R. 7.4(a))
- The ARB will not request that a contracting agency postpone a contract action (29 C.F.R. 7.4(b))

Resources: Conformances

- Wage Determinations and Conformance Resource Guide

<https://www.dol.gov/sites/dolgov/files/WHD/davis-bacon/conformance.pdf>

- Conformance Email Box

WHD-CBACONFORMANCE_INCOMING@dol.gov

- CBA Updates Email Box

WHD_CBA_UPDATES@DOL.GOV

- DBA/BCWD Appeal(s) Email Box

DBA.BCWD.APPEAL@DOL.GOV

- BCWD State Listing

<https://www.dol.gov/whd/govcontracts/stateassignments.htm>

Internet Sites

- Wage Determinations: <https://sam.gov>
- Wage and Hour Division: <http://www.dol.gov/agencies/whd/government-contracts>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>
- Resource Book: <http://www.dol.gov/agencies/whd/prevaling-wage-resource-book>
- Office of the Administrative Law Judges Law Library: <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA>
- Prevailing Wage Topic videos: <https://www.dol.gov/agencies/whd/government-contracts/construction/presentations>

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