
Contact Person	Andrea Spiker	Revision	0
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DAVIS-BACON ACT PROCEDURE

1.0 APPROVAL RECORD

- Reviewed by: Document Control Coordinator (Amy Tehan)
- Reviewed by: Facilities Manager (Mark Grootveld)
- Approved by: Manager, Purchasing and Property Services (Andrea Spiker)
- Approved by: Chief Operations Officer (Mark Murphy)

The official approval record for this document is maintained in the Training & Records Management Office, 151 TASF.

2.0 REVISION/REVIEW INFORMATION

The revision description for this document is available from and maintained by the author.

3.0 PURPOSE AND SCOPE

This procedure applies to construction and maintenance activities completed at the Laboratory. This procedure applies to the identification of applicability to the Davis-Bacon Act (DBA) for construction, construction type, and maintenance activities performed at the Laboratory. This procedure describes how the Laboratory will comply with the requirements of its contract and federal labor standards.

4.0 DISTRIBUTION

Distribution to all appropriate personnel is via the [Ames Laboratory Documents webpage](#).

5.0 GENERAL OVERVIEW

DBA applies to contracts in excess of \$2,000 USD for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, where the United States or the District of Columbia is a direct party to the contract. DBA specifies each covered contract must contain provisions, found at 29 CFR 5.5, requiring contractors to pay its laborers and mechanics employed on the project's site, on a weekly basis, no less than the wages and benefits that are prevailing in the area as determined by the Secretary of Labor. Construction activities performed such as preparation for construction (e.g., demolition of existing structures, equipment, and material set-up, etc.), fabrication of materials, installation of materials, and post-construction clean-up in DBA covered activities. The federal agency awarding the contract must make the determination that DBA applies to the project and must incorporate the applicable DBA clauses and wage determinations (also referred to as "wage decisions") into the requirements of the contract. The provisions of DBA must flow down to all subcontracts in excess of \$2,000 USD, regardless of tier.

Work and services that are part of operational and maintenance activities or which being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work are classified as non-covered by the DBA.

A construction "project" may involve more than one "contract if all such contracts are closely related in purpose, time, and place (e.g., preparatory demolition contracts and final interior decorating contracts are often separate from the "construction" contract). DBA will apply to all



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such individual contract, regardless of amount, if the overall project is in excess of \$2,000 USD.

DOE Acquisition Guide Chapter 22 and DEAR 970.2204-1-1 are used by the Department of Energy to determine if DBA regulations apply to a project:

- *If the work consists of construction, specifically: alteration, repair, decorating, painting and/or remodeling.*
- *If the work is performed to a federally funded public building or work.*
- *If the estimated cost exceeds \$2,000 USD. It is specifically prohibited to separate a project into smaller parts to avoid the Davis-Bacon Act.*

This procedure is based on: (1) The Davis-Bacon Act (40 U.S.C. 3141-48); (2) Department of Energy Acquisition Regulation (DEAR 970.2204-1-1); (3) Federal Acquisition Regulation (FAR) Part 22.401; (4) Prime Contract Clauses: H.23 *Additional Labor Requirements*, I.24 *FAR 52.222-4 Contract Work Hours and Safety Standards Act*, and I.25, *FAR 52.222-11 Subcontracts (Labor Standards)*; (5) DOE Acquisition Guide Chapter 22; and (6) DOE - A Desk Guide to the Davis-Bacon Act, dated July 30, 2012. This document implements these requirements and establishes Ames Laboratory operating procedures in areas not covered by law, regulation or contract language.

In the event of any inconsistencies between the procedures contained herein, the terms and conditions of the Contract, or Federal Acquisition Regulation (FAR), the inconsistency will be resolved in favor of, (1) the DEAR, (2) the FAR, and (3) the terms and conditions of the contract.

6.0 DEFINITIONS

6.1 Construction, Alteration or Repair: All types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations:

- Altering, remodeling, installation (if appropriate) on the work site of items fabricated off-site.
- Painting and decorating.
- Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.
- Transportation of materials and supplies between the sites of the work.

6.2 Corrective Maintenance: A maintenance task performed to identify, isolate, and rectify a fault to a piece of equipment or facility and is aimed at restoring an asset to a condition in which it can perform its intended function. This would include repair by replacement when the replacement is like for the replacement. Corrective maintenance can be subdivided into:

- **Immediate Corrective Maintenance:** Work that is done immediately after a failure.
- **Deferred Corrective Maintenance:** Work that is delayed until a time when conditions can be met to perform the tasks.

Contact Person	Andrea Spiker	Revision	0
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- 6.3 Deferred Maintenance:** Work that is typically scheduled, routing and recurring. The workers are typically engaged in performing ongoing-activities directed toward keeping fixed assets in an acceptable condition. This work has been delayed until a time when conditions can be met to perform the maintenance.
- 6.4 Emergency Construction:** Work that is needed to combat the effects of equipment failure, accident, fire, flood, earthquake or other casualty. In an emergency Davis-Bacon regulations allow for an exception. This exception is effective only during, and immediately after, the emergency (the time reasonably needed to achieve safety, preserve health, or restart a necessary function) and excludes rebuilding or replacement of damaged structures or equipment.
- 6.5 Facilities Work Order:** Work items that are minor and do not change the intended use of, or significantly increase the capability of a facility or piece of equipment.
- 6.6 Incidental Construction:** Work that is a minor accompaniment to and necessary to complete a Facilities work order.
- 6.7 Preventative Maintenance:** Work that is typically scheduled, routing and recurring. The workers are typically engaged in performing ongoing-activities directed toward keeping fixed assets in an acceptable condition. The determination of acceptable condition is the responsibility of management.

7.0 GENERAL REQUIREMENTS

7.1. Davis-Bacon Act Covered

- Construction, alteration, repairs, including painting more than \$2,000
- Installation or assembly of equipment involving substantial construction
- Demolition when part of or required for new construction

7.2 Davis-Bacon Act Non-Covered

- Estimated to cost \$2,000 or less
- Items that meet the definitions for corrective maintenance, deferred maintenance, preventative maintenance, Facilities work order and incidental construction in as defined in 6.2, 6.3, 6.5, 6.6, and 6.7 above
- Assembly, modification, installation, replacement, rearrangement connection, etc. of machinery and equipment
- Experimental development of equipment processes and devices, including installation
- Emergency construction as defined in 6.4. (required approval by Head of Contracting Activity for DOE)
- Decontamination (required approval by Head of Contracting Activity for DOE)
- Burial of contaminated material (required approval by Head of Contracting Activity for DOE)
- Special exception (required approval by Head of Contracting Activity for DOE) that includes work and services which involve material risk to continuity of



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Contact Person	Andrea Spiker	Revision	0
Document	Procedure 48300.002	Effective Date	06/01/2013
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- operations, to life or property, or to DOE operating requirements
- Supplies and equipment
- Temporary installation or disconnection

8.0 PROCEDURE INFORMATION

Responsibility	Action
Facilities Services	<ol style="list-style-type: none"> 1. Completes Davis-Bacon Act Pre-Work Checklist (Form 48300.039) for each project to determine whether DBA-covered work. 2. If DBA covered, completes a Purchase Requisition form with Statement/Scope of Work and provides to Purchasing to subcontract. 3. If DBA covered but Facilities takes exception under DEAR 970.2204-1-1, Facilities submits a request for exception to DOE Head of Contracting Activity (HCA). 4. If not covered by DBA, schedules work to be completed with Facilities staff or subcontracts work through purchasing requisition process. 5. Presents work items that are questionable to the Laboratory's COO and Purchasing and Property Services Manager for review.
Purchasing	<ol style="list-style-type: none"> 6. Routes the purchase requisition for approval. 7. Pulls the wage determination from www.wdol.gov and requests approval from the Contracting Officer.
Contracting Officer	<ol style="list-style-type: none"> 8. Reviews and approves the wage determination. 9. Issues approval letter to Purchasing.
Purchasing	<ol style="list-style-type: none"> 10. Issues Request for Proposal, which includes the wage determination. 11. Routes proposals to review committee or Facilities representative for review and recommendation for award. 12. Contract is executed, including all required Davis-Bacon flow downs. 13. For any job classification that is not included in the wage determination, SF 1444, <i>Request for Authorization of Additional Classification and Rate</i> shall be completed and submitted to the Contracting Officer for approval (this request is usually initiated by the subcontractor with supporting documentation). 14. Reviews and approves any conformance requests.
Contracting Officer	<ol style="list-style-type: none"> 15. Purchasing communicates approval to contractor and adds the approved conformance request to the wage determination.
Purchasing	<ol style="list-style-type: none"> 16. During the contract, Purchasing receives certified payrolls for each week work is completed. 17. Purchasing will also collect documentation of certified apprentice programs as well as individual registrations for apprentices working

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on the contract.

18. Purchasing will conduct compliance checks and investigations on all subcontracts covered by DBA as necessary to ensure compliance with the labor standards requirements of the subcontract. This includes the following:
 - a. Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked.
 - b. On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.
 - c. Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time, are complete, and in compliance with the contract requirements, using Davis-Bacon Act Payroll Compliance Form (48300.037).
19. Compliance checks will be completed based on risk, length and size of the subcontract. Purchasing will sample no less than 10% of certified payrolls per contract. On-site interviews will be conducted based on risk and past performance with the subcontractor/s.
20. Any discrepancies found between payroll records and the applicable wage determination shall be brought to the attention of the subcontractor for resolution.
21. Purchasing will withhold approving invoices for payment to the contractor/s until certified payrolls are received and reviewed for compliance. Restitution and resolution of all payroll issues shall be accompanied before final payment is made to the subcontractor. Subcontractors shall provide evidence to Ames Lab as required.

9.0 POST PERFORMANCE ACTIVITY

- 9.1. All wage determination approvals, approved conformance requests, certified payrolls and documentation associated with applicability of the Davis-Bacon Act will be compiled with the corresponding subcontract file or in a working file identified with the subcontract number and will follow records retention period applicable to subcontracts.
- 9.2. Purchasing will provide information for semi-annual reports to the Ames Site Office.