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**Contents: Davis-Bacon Act**

Effective Date: **October 2001**

Point of Contact: [Davis-Bacon Committee Chair](#)

## Section

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#### [1. Screening Work for Applicability to the Davis-Bacon Act](#)

- Follow procedures for screening construction-type work at the Laboratory by activities funded from sources in the following six categories:
  - Category 1. General Plant Projects (GPP);
  - Category 2. Accelerator Improvement Projects (AIP, includes Accelerator & Reactor Additions & Modifications [ARAM] and [ARIM]);
  - Category 3. Line Item Projects;
  - Category 4. Capital Equipment Projects;
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[Capital Equipment Project Data & Authorization Form](#)

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[Davis-Bacon Screening Document](#)

## Training Requirements and Reporting Obligations

This subject area does not contain training requirements.

This subject area does not contain reporting obligations.

### **References**

## References

[ES&H Standard 1.3.5, Planning and Control of Experiments](#)

[ES&H Standard 1.3.6, Work Planning and Control for Operations](#)

[Project, Planning, Programming and Budgeting Process \(3PBP\) Program Description](#)

## Standards of Performance

The Laboratory's policies, standards, and Laboratory-wide procedures and guidelines are based on an evaluation of external requirements documents and applicable non-government standards, e.g., orders, directives, and federal, state, and local laws.

Managers shall ensure that scopes of work properly consider all elements of the Laboratory's operational priorities.

All staff and guests shall comply with applicable Laboratory policies, standards, and procedures, unless a formal variance is obtained.

All staff shall clearly and completely specify appropriate requirements for purchased goods and services consistent with project needs.

## Management System

This subject area belongs to the **Life Cycle Asset Management** management system.

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## Introduction: Davis-Bacon Act

Effective Date: **October 2001**

Point of Contact: [Davis-Bacon Committee Chair](#)

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Davis-Bacon Screenings are required for all construction-type work done at Brookhaven National Laboratory (BNL). BNL's contract with the Department of Energy (DOE) requires that a written Davis-Bacon Determination by the DOE Davis-Bacon Committee Chair be received before starting construction of any project on the BNL site. This subject area describes the procedures, using a graded approach, for screening work for applicability to the Davis-Bacon Act.

This work includes activities funded from sources in the following six categories:

- Category 1. General Plant Projects (GPP);
- Category 2. Accelerator Improvement Projects (AIP, includes Accelerator & Reactor Additions & Modifications [ARAM] and [ARIM]);
- Category 3. Line Item Projects;
- Category 4. Capital Equipment Projects;
- Category 5. Special Maintenance (SM/Operating Funded) Projects and Environmental Management (EM) Projects;
- Category 6. All Other Activities.

The intent of this subject area is to ensure that all work conducted at the Laboratory is reviewed for compliance with the Davis-Bacon Act and that documentation of screening activities is maintained. Department Chairs and Division Managers are responsible for implementing the program, selecting Davis-Bacon Coordinators, and the reporting and documentation requirements described in this subject area.

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Subject Area: **Davis-Bacon Act**

# 1. Screening Work for Applicability to the Davis-Bacon Act

Effective Date: **October 2001**

Point of Contact: [Davis-Bacon Committee Chair](#)

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## Applicability

This information applies to BNL staff requesting construction-type work to be done, Department/Division Davis-Bacon Coordinators, and the Davis-Bacon Committee.

## Required Procedure

Davis-Bacon Screenings are required for all construction-type work done at the Laboratory regardless of funding source. This work includes activities funded from sources in the six categories listed below.

Screening Work for Applicability to the Davis-Bacon Act contains six subsections:

- [1.1 Category 1. General Plant Projects \(GPP\);](#)
- [1.2 Category 2. Accelerator Improvement Projects \(AIP, includes Accelerator & Reactor Additions & Modifications \[ARAM\] and \[ARIM\]\);](#)
- [1.3 Category 3. Line Item Projects;](#)
- [1.4 Category 4. Capital Equipment Projects;](#)
- [1.5 Category 5. Special Maintenance \(SM/Operating Funded\) Projects and Environmental Management \(EM\) Projects;](#)
- [1.6 Category 6. All Other Activities.](#)

See the [Davis-Bacon Screening/Determination Flowchart](#) for an overview of this procedure.

### 1.1 Category 1. General Plant Projects (GPP)

General Plant Projects (GPP) include miscellaneous modifications, alterations, and new construction relating to buildings, site utilities, and programmatic support activities. The maximum cost of any GPP may not exceed \$5M. Most are considered to be construction projects and are usually "covered" under the Davis-Bacon Act. Some components, however,

within each project may be "noncovered" for a variety of reasons. These include activities that are in the category of maintenance or operations, and activities that are considered to be scientific or experimental. GPP are prioritized for funding using the Laboratory's Project Planning, Programming, and Budgeting Process (3PBP). See the [Project, Planning, Programming and Budgeting Process \(3PBP\)](#) Program Description for more information.

**Note:** A separate [Davis-Bacon Screening Document](#) (DBSD) must be prepared for every project in this category. Projects are identified by Activity Data Sheet (ADS) number, and each has its own project and activity number as assigned by the Budget Office.

<b>Step 1</b>	The BNL GPP Program Manager distributes the BNL-approved Funding Authorization Status Sheet (FASS) to the cognizant Supervisors/Managers. The FASS is the result of the Project Planning, Programming and Budgeting Process. See the <a href="#">Project, Planning, Programming and Budgeting Process (3PBP)</a> Program Description for more information.
<b>Step 2</b>	<p>The cognizant Supervisor/Manager assigns a Project Engineer the responsibility for implementing the project. Before the work starts, the Project Engineer (Requestor)</p> <ul style="list-style-type: none"> <li>• Discusses the scope of the work and the anticipated method of accomplishment with the Department/Division Davis-Bacon Coordinator;</li> <li>• Completes Part I of the <a href="#">Davis-Bacon Screening Document</a> (DBSD) or downloads the <a href="#">Davis-Bacon Screening Program Database</a> to complete the screening;</li> <li>• Signs Part I of the DBSD as the Requestor, and sends copies to the Department/Division Davis-Bacon Coordinator and the Work Control Coordinator, or according to departmental-specific procedures.</li> </ul> <p><b>Note:</b> Downloading the Davis-Bacon Screening Program Database is optional. Either complete the form or use the database.</p>
<b>Step 3</b>	<p>The Department/Division Davis-Bacon Coordinator performs the preliminary screening of the work for Davis-Bacon applicability by determining whether the work has construction components. Consider the following when making this determination:</p> <ul style="list-style-type: none"> <li>• If there is no construction work associated with the work, the project is noncovered by the Davis-Bacon statutes.</li> <li>• If the scope of work includes labor to perform electrical, mechanical, carpentry, painting, or any other function normally associated with construction, the activity should be considered to be covered by the Davis-Bacon Act. However, the following exceptions may apply: <ul style="list-style-type: none"> <li>○ work is scientific or experimental, and there are no construction-type activities involved;</li> <li>○ experimental development of equipment, processes, or devices, which are assembled for conducting a test or experiment;</li> <li>○ assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment;</li> <li>○ decontamination, including washing, scrubbing, and scraping to remove contamination and/or removal of contaminated soil or other</li> </ul> </li> </ul>

	<p>remove contamination and/or removal of contaminated soil or other materials;</p> <ul style="list-style-type: none"> <li>o emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty;</li> <li>o maintenance contracts for servicing or maintenance work in general;</li> <li>o furnishing of equipment or materials.</li> </ul>
<b>Step 4</b>	<p>The Department/Division Davis-Bacon Coordinator and the Project Engineer agree on the applicability of the Davis-Bacon Act and together complete Part II of the DBSD. The Department/Division Davis-Bacon Coordinator signs Part II of the DBSD.</p> <p><b>Note:</b> This is a preliminary screening, and the intended Method of Accomplishment should be clearly indicated by checking the appropriate boxes under "covered" and "noncovered" work.</p>
<b>Step 5</b>	<p>The Department/Division Davis-Bacon Coordinator sends the original DBSD, with Parts I and II completed, to the BNL Davis-Bacon Committee Chair for concurrence.</p> <p><b>Note:</b> Signed copies also should be forwarded to the Work Requestor and the Work Control Coordinator.</p>
<b>Step 6</b>	<p>The BNL Davis-Bacon Committee reviews the DBSDS and refers to the Department/Division Davis-Bacon Coordinator for clarifications, if required. The Committee completes Part III and records the Department of Energy Acquisition Regulations (DEAR) that most closely apply to this work. The DEAR is referenced for the "noncovered" as well as the "covered" work.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee Chair signs and BNL Davis-Bacon Committee members initial Part III of the DBSD.</p>
<b>Step 7</b>	<p>The BNL Davis-Bacon Committee Chair sends the DBSD to DOE for review by the DOE Davis-Bacon Committee.</p>
<b>Step 8</b>	<p>The DOE Davis-Bacon Committee reviews the DBSD and the DOE Davis-Bacon Committee Chair completes the Determination, signs and dates the DBSD, and returns copies to the BNL Davis-Bacon Committee Chair.</p>
<b>Step 9</b>	<p>The BNL Davis-Bacon Committee Chair forwards copies to the Department/Division Davis-Bacon Coordinator for distribution.</p>

	<b>Note:</b> The BNL Davis-Bacon Committee Chair maintains a log of all Davis-Bacon Screening Documents processed.
<b>Step 10</b>	The Department/Division Davis-Bacon Coordinator authorizes work to proceed according to established departmental and Laboratory work-planning procedures. See <a href="#">Work Planning and Control for Experiments and Operations</a> Subject Area.

## 1.2 Category 2. Accelerator Improvement Projects (AIP)

Accelerator Improvement Projects (AIP) include additions, modifications, and improvements to High Energy and Nuclear Physics accelerators and their experimental areas, which are an integral part of the technical complex. Accelerator and Reactor Additions and Modifications (ARAM), supported by either the Material Sciences or Chemical Sciences programs within the Basic Energy Sciences Program (BES) also are included in this category.

AIP Projects are often exempt from the requirements of the Davis-Bacon Act because they are considered to be scientific or experimental. Some components, however, within each project may be "covered" for a variety of reasons. These include activities that are considered to be "construction," and, although the ultimate goal is the completion of an experiment or scientific project, these activities are considered to be "covered." AIP projects are funded by DOE Program Offices and administered by BNL Departments engaged in major machine operations (i.e., Collider Accelerator Division, National Synchrotron Light Source, and Alternating Gradient Synchrotron).

<b>Step 1</b>	The Department AIP Program Administrator distributes the BNL-approved program document to the Department Engineering staff for implementation.
<b>Step 2</b>	<p>The Supervisor/Manager assigns a Project Engineer the responsibility for implementing the project. Before the work starts, the Project Engineer (Requestor)</p> <ul style="list-style-type: none"> <li>• Discusses the scope of the work and the anticipated method of accomplishment with the Department/Division Davis-Bacon Coordinator;</li> <li>• Completes Part I of the <a href="#">Davis-Bacon Screening Document</a> (DBSD) or downloads the <a href="#">Davis-Bacon Screening Program Database</a> to complete the screening;</li> <li>• Signs Part I of the DBSD as the Requestor, and sends copies to the Department/Division Davis-Bacon Coordinator and the Work Control Coordinator according to departmental-specific procedures.</li> </ul> <p><b>Note:</b> Downloading the Davis-Bacon Screening Program Database is optional. Either complete the form or use the database.</p>
<b>Step 3</b>	The Davis-Bacon Coordinator performs the preliminary screening of the work for Davis-Bacon applicability by determining whether the work has

for Davis-Bacon applicability by determining whether the work has construction components.

**Note:** Much of the work in scientific departments is not construction, and therefore, may not be covered by the Davis-Bacon Act.

Consider the following when making this determination:

- If there is no construction work associated with the work, the project is noncovered by the Davis-Bacon statutes.
- If the scope of work includes labor to perform electrical, mechanical, carpentry, painting, or any other function normally associated with construction, the activity should be considered to be covered by the Davis-Bacon Act. However, the following exceptions may apply:
  - work is scientific or experimental, and there are no construction-type activities involved;
  - experimental development of equipment, processes, or devices, which are assembled for conducting a test or experiment;
  - assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment;
  - decontamination, including washing, scrubbing, and scraping to remove contamination and/or removal of contaminated soil or other materials;
  - emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty;
  - maintenance contracts for servicing or maintenance work in general;
  - furnishing of equipment or materials.

#### Step 4

The Department/Division Davis-Bacon Coordinator and the Project Engineer agree on the applicability of the Davis-Bacon Act and together complete Part II of the DBSD. The Department/Division Davis-Bacon Coordinator signs Part II of the DBSD.

**Note:** This is a preliminary screening, and the intended Method of Accomplishment should be clearly indicated by checking the appropriate boxes under "covered" and "noncovered" work.

#### Step 5

The Department/Division Davis-Bacon Coordinator sends the original DBSD, with Parts I and II completed, to the BNL Davis-Bacon Committee for concurrence.

**Note:** Signed copies also should be forwarded to the Work Requestor and the Work Control Coordinator.

<b>Step 6</b>	<p>The BNL Davis-Bacon Committee reviews the DBSD and refers to the Department/Division Davis-Bacon Coordinator for clarifications, if required. The Committee completes Part III and records the Department of Energy Acquisition Regulations (DEAR) that most closely apply to this work. The DEAR is referenced for the "noncovered" as well as the "covered" work.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee Chair signs and BNL Davis-Bacon Committee members initial Part III of the Davis-Bacon Screening Document.</p>
<b>Step 7</b>	<p>The BNL Davis-Bacon Committee Chair sends the DBSD to the Department of Energy for review by the DOE Davis-Bacon Committee.</p>
<b>Step 8</b>	<p>The DOE Davis-Bacon Committee reviews the DBSD and the DOE Davis-Bacon Committee Chair completes the Determination, signs and dates the DBSD, and returns copies to the BNL Davis-Bacon Committee Chair.</p>
<b>Step 9</b>	<p>The BNL Davis-Bacon Committee Chair forwards copies to the Department/Division Davis-Bacon Coordinator for distribution.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee Chair maintains a log of all Davis-Bacon Screening Documents processed.</p>
<b>Step 10</b>	<p>The Department/Division Davis-Bacon Coordinator authorizes work to proceed according to established departmental and Laboratory work-planning procedures. See <a href="#">Work Planning and Control for Experiments and Operations</a> Subject Area.</p>

### 1.3 Category 3. Line Item Projects

Line Item Projects consist of major construction activities related to buildings, utility system upgrades, environmental safety and health, programmatic upgrades and new initiatives, and other miscellaneous projects supportive of the BNL Site Master Plan. The minimum threshold for Line Item Projects is \$5M. Most Line Item Projects are considered to be construction projects and are usually "covered" under the Davis-Bacon Act. Some components, however, within each project that may be "noncovered" for a variety of reasons. These include activities that are in the category of maintenance or operations, and activities that are considered to be scientific or experimental. Line Item Projects are usually funded by DOE Program Offices and the Multi-Energy-Laboratory Facility Support Office (MEL/FS).

**Note:** A separate [Davis-Bacon Screening Document](#) (DBSD) must be prepared for every project in this category.

<b>Step 1</b>	<p>The BNL Budget Officer receives Line Item Project Approval from DOE and informs Department/Division Administrators responsible for Program Management. Administrators inform Department Chairs and Division Managers of project approvals.</p>
<b>Step 2</b>	<p>Department/Division Administrators assign a Project Manager the responsibility for implementing the project. Before the work starts, the Project Manager (Requestor)</p> <p>- Discusses the scope of the work and the anticipated method of</p>

	<ul style="list-style-type: none"> <li>• Discusses the scope of the work and the anticipated method of accomplishment with the Department/Division Davis-Bacon Coordinator;</li> <li>• Completes Part I of the <a href="#">Davis-Bacon Screening Document</a> (DBSD) or downloads the <a href="#">Davis-Bacon Screening Program Database</a> to complete the screening.</li> </ul> <p><b>Note:</b> Downloading the Davis-Bacon Screening Program Database is optional. Either complete the form or use the database.</p> <p>The Project Manager signs Part I of the DBSD as the Requestor and forwards copies to the Department/Division Davis-Bacon Coordinator and the Work Control Coordinator.</p>
<b>Step 3</b>	<p>The Department/Division Davis-Bacon Coordinator performs the preliminary screening of the work for Davis-Bacon applicability by determining whether the work has construction components. Consider the following when making this determination:</p> <ul style="list-style-type: none"> <li>• If the scope of work includes labor to perform electrical, mechanical, carpentry, painting, or any other function normally associated with construction, the activity should be considered to be covered by the Davis-Bacon Act. However, the following exceptions may apply: <ul style="list-style-type: none"> <li>○ work is scientific or experimental, and there are no construction-type activities involved (requires DOE concurrence);</li> <li>○ experimental development of equipment, processes, or devices, which are assembled for conducting a test or experiment;</li> <li>○ assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment;</li> <li>○ decontamination, including washing, scrubbing, and scraping to remove contamination and/or removal of contaminated soil or other materials;</li> <li>○ emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty;</li> <li>○ maintenance contracts for servicing or maintenance work in general;</li> <li>○ furnishing of equipment or materials.</li> </ul> </li> </ul>
<b>Step 4</b>	<p>The Department/Division Davis-Bacon Coordinator and the Project Engineer agree on the applicability of the Davis-Bacon Act and together complete Part II of the DBSD. The Department/Division Davis-Bacon Coordinator signs Part II of the DBSD.</p>

	<p><b>Note:</b> This is a preliminary screening, and the intended Method of Accomplishment should be clearly indicated by checking the appropriate boxes under "covered" and "noncovered" work.</p>
<b>Step 5</b>	<p>The Department/Division Davis-Bacon Coordinator sends the original DBSD, with Parts I and II completed, to the BNL Davis-Bacon Committee for concurrence.</p> <p><b>Note:</b> Signed copies also should be sent to the Requestor and the Work Control Coordinator.</p>
<b>Step 6</b>	<p>The BNL Davis-Bacon Committee reviews the DBSD and refers to the Department/Division Davis-Bacon Coordinator for clarifications, if required. The Committee completes Part III and records the Department of Energy Acquisition Regulations (DEAR) that most closely apply to this work. The DEAR is referenced for the "noncovered" as well as the "covered" work.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee Chair signs and BNL Davis-Bacon Committee members initial Part III of the Davis-Bacon Screening Document.</p>
<b>Step 7</b>	<p>The BNL Davis-Bacon Committee Chair sends the DBSD to DOE for review by the DOE Davis-Bacon Committee.</p>
<b>Step 8</b>	<p>The DOE Davis-Bacon Committee reviews the DBSD and the DOE Davis-Bacon Committee Chair completes the Determination, signs and dates the DBSD, and returns copies to the BNL Davis-Bacon Committee Chair.</p>
<b>Step 9</b>	<p>The BNL Davis-Bacon Committee Chair forwards copies to the Department/Division Davis-Bacon Coordinator for distribution.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee Chair maintains a log of all Davis-Bacon Screening Documents processed.</p>
<b>Step 10</b>	<p>The Department/Division Davis-Bacon Coordinator authorizes work to proceed according to established departmental and Laboratory work-planning procedures. See <a href="#">Work Planning and Control for Experiments and Operations</a> Subject Area.</p>

## 1.4 Category 4. Capital Equipment Projects

Capital Equipment includes the acquisition or fabrication of equipment not directly related to construction. Funding for Capital Equipment projects is authorized by the Budget Office upon departmental submission of a [Capital Equipment Project Data & Authorization \(CEPDA\) Form](#) and the [Davis-Bacon Screening Document](#). Capital Equipment Projects may consist of the purchase of scientific or experimental equipment or both, utility systems, telephone or other communications systems, elevators, generators, or any combination thereof. The Davis-Bacon statutes do not cover the purchase of equipment. **Installation of this equipment, however, must be evaluated on a case-by-case basis.**

Contracts involving the installation of telephone systems or utilities are not subject to the Davis-Bacon statutes, when the work is performed by employees of the telephone or utility company supplying the services, and the material and equipment installed are owned by the

company supplying the services, and the material and equipment installed are owned by the telephone or utility company. However, a contract for a central telephone system to be installed by the manufacturer and owned by the United States is subject to the statutes.

<b>Step 1</b>	The Department/Division requesting capital equipment funding completes pages 1 to 3 of the <a href="#">Capital Equipment Project Data &amp; Authorization (CEPDA) Form</a> and the <a href="#">Davis-Bacon Screening Document</a> for submission to the Budget Office, and obtains approval signatures.
<b>Step 2</b>	The Department/Division sends the CEPDA Form and the Davis-Bacon Screening Document to the Budget Office for review, Davis-Bacon screening, and assignment of account information.
<b>Step 3</b>	The Budget Office reviews the request and sends the CEPDA Form and the Davis-Bacon Screening Document to the BNL Davis-Bacon Committee Chair.
<b>Step 4</b>	The BNL Davis-Bacon Committee Chair presents the CEPDA Form and the Davis-Bacon Screening Document to the Davis-Bacon Committee at the next scheduled meeting.
<b>Step 5</b>	The BNL Davis-Bacon Committee reviews the CEPDA Form and the Davis-Bacon Screening Document. The BNL Davis-Bacon Committee Chair signs and attending members initial Part III of the Davis-Bacon Screening Document, indicating concurrence with the screening. The Chair forwards the form to DOE for review by the DOE Davis-Bacon Committee.
<b>Step 6</b>	The DOE Davis-Bacon Committee Chair sends the signed CEPDA Form and the Davis-Bacon Screening Document to the BNL Davis-Bacon Committee Chair. The Chair files a copy of the CEPDA and the Davis-Bacon Screening Document for his/her records and returns the originals to the Budget Office. The Budget Office assigns an account number and sends copies to the initiating Department.
<b>Step 7</b>	Upon receipt of the signed CEPDA and the Davis-Bacon Screening Document, the Davis-Bacon Coordinator authorizes work to proceed according to established departmental and Laboratory work-planning procedures. See <a href="#">Work Planning and Control for Experiments and Operations</a> Subject Area.

## 1.5 Category 5. Special Maintenance (SM/Operating Funded) Projects and Environmental Management (EM) Projects

Most SM/Operating Funded Projects are considered construction projects and are usually "covered" under the Davis-Bacon Act. Some components, however, within each project may be "noncovered" for a variety of reasons. These include studies, surveys, maintenance, operations, and activities that are considered scientific or experimental. SM projects are prioritized for funding using the Laboratory's Project Planning, Programming, and Budgeting Process (3PBP). See the [Project, Planning, Programming and Budgeting Process \(3PBP\)](#) Program Description for more information.

EM Projects may be "covered" or "noncovered," and in many instances, satisfy the

EM Projects may be covered or noncovered, and in many instances, satisfy the requirements for Exclusion Code 1.6.3.4 (Decontamination). See the exhibit [Exclusions from Davis-Bacon Compliance](#) for information on exclusions. Each activity or project, however, must be independently screened based on its scope of work.

<p><b>Step 1</b></p>	<p><b>Special Maintenance</b></p> <p>The BNL Special Maintenance (SM)/Operating Funded Projects Program Manager distributes the BNL-approved Funding Authorization Status Sheet (FASS) to the cognizant Supervisors/Managers. The FASS is the result of the Project Planning, Programming and Budgeting Process. See the <a href="#">Project, Planning, Programming and Budgeting Process (3BPB)</a> Program Description for more information.</p> <p><b>Environmental Management</b></p> <p>The Environmental Management (EM) Director assigns a Project Manager the responsibility for implementing the project according to Department/Division procedures. The Project Manager ensures that all work for which he/she is responsible is screened for Davis-Bacon compliance.</p>
<p><b>Step 2</b></p>	<p><b>Special Maintenance</b></p> <p>The Supervisor/Manager assigns a Project Engineer the responsibility for implementing the project.</p> <p><b>Special Maintenance and Environmental Management</b></p> <p>Before the work starts, the Project Engineer (Requestor)</p> <ul style="list-style-type: none"> <li>• Discusses the scope of the work and the anticipated method of accomplishment with the Department/Division Davis-Bacon Coordinator;</li> <li>• Completes Part I of the <a href="#">Davis-Bacon Screening Document (DBSD)</a> or downloads the <a href="#">Davis-Bacon Screening Program Database</a> to complete the screening;</li> <li>• Signs Part I of the DBSD as the Requestor and sends copies to the Department/Division Davis-Bacon Coordinator and the Work Control Coordinator, or according to departmental-specific procedures.</li> </ul> <p><b>Note:</b> Downloading the Davis-Bacon Screening Program Database is optional. Either complete the form or use the database.</p>
<p><b>Step 3</b></p>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The Department/Division Davis-Bacon Coordinator performs the preliminary screening of the work for Davis-Bacon applicability by determining whether the work has construction components. Consider the following when making this determination:</p>

	<ul style="list-style-type: none"> <li>• If there is no construction work associated with the work, the project is noncovered by the Davis-Bacon statutes.</li> <li>• If the scope of work includes labor to perform electrical, mechanical, carpentry, painting, or any other function normally associated with construction, the activity should be considered to be covered by the Davis-Bacon Act. However, the following exceptions may apply: <ul style="list-style-type: none"> <li>○ work is scientific or experimental, and there are no construction-type activities involved;</li> <li>○ experimental development of equipment, processes, or devices, which are assembled for conducting a test or experiment;</li> <li>○ assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment;</li> <li>○ decontamination, including washing, scrubbing, and scraping to remove contamination and/or removal of contaminated soil or other materials;</li> <li>○ emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty;</li> <li>○ maintenance contracts for servicing or maintenance work in general;</li> <li>○ furnishing of equipment or materials.</li> </ul> </li> </ul>
<p><b>Step 4</b></p>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The Department/Division Davis-Bacon Coordinator and the Project Engineer agree on the applicability of the Davis-Bacon Act and together complete Part II of the DBSD. The Department/Division Davis-Bacon Coordinator signs Part II of the DBSD.</p> <p><b>Note:</b> This is a preliminary screening, and the intended Method of Accomplishment should be clearly indicated by checking the appropriate boxes under "covered" and "noncovered" work.</p>
<p><b>Step 5</b></p>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The Department/Division Davis-Bacon Coordinator sends the original DBSD, with Parts I and II completed, to the BNL Davis-Bacon Committee Chair for concurrence.</p> <p><b>Note:</b> Signed copies also should be forwarded to the work Requestor and the Work Control Coordinator.</p>
<p><b>Step 6</b></p>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The Davis-Bacon Committee reviews the DBSD and asks the Davis-Bacon Coordinator for clarifications, if required. The Committee completes Part III and records the Department of Energy Acquisition Regulations (DEAR) that most closely apply to this work. The DEAR is referenced for the "noncovered" as well as the "covered" work.</p>

	as well as the covered work.
<b>Step 7</b>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The BNL Davis-Bacon Committee Chair sends the DBSD to DOE for review by the DOE Davis-Bacon Committee.</p>
<b>Step 8</b>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The DOE Davis-Bacon Committee reviews the DBSD and the DOE Davis-Bacon Committee completes the Determination, signs and dates the DBSD, and returns copies to the BNL Davis-Bacon Committee Chair.</p>
<b>Step 9</b>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The BNL Davis-Bacon Committee Chair sends copies to the Department/Division Davis-Bacon Coordinator for distribution.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee Chair maintains a log of all Davis-Bacon Screening Documents processed.</p>
<b>Step 10</b>	<p><b>Special Maintenance and Environmental Management</b></p> <p>The Department/Division Davis-Bacon Coordinator authorizes work to proceed according to established departmental and Laboratory work-planning procedures. See <a href="#">Work Planning and Control for Experiments and Operations Subject Area</a>.</p>

## 1.6 Category 6. All Other Activities

This category includes all work that does not fall into one of the other five categories. This includes work performed by Plant Engineering tradespersons whether working within Plant Engineering or assigned to Departments/Divisions on a labor/hour basis.

The Department/Division Davis-Bacon Coordinator is responsible for documenting that work in this category has been reviewed for Davis-Bacon applicability. This documentation is required for all work that consists of construction-type activities with total costs of \$2000 or more.

<b>Step 1</b>	The person (Requestor) assigned the responsibility for completing the task, activity, or project determines whether construction-type activities are associated with the work.
<b>Step 2</b>	If no construction-type activities are associated with the work, it is considered to be noncovered under the Davis-Bacon Act, and prevailing wages are not required to be paid. Work may proceed in accordance with established BNL and departmental work control procedures. No further documentation or Davis-Bacon review is required.

<b>Step 3</b>	If the work includes construction-type activities, and the the work costs less than \$2000, it is excluded from Davis-Bacon requirements. Work may proceed in accordance with established BNL and departmental work control procedures. No further documentation or Davis-Bacon review is required.
<b>Step 4</b>	If the work includes construction-type activities with costs exceeding \$2000 and meets the definition of "maintenance," it is excluded from Davis-Bacon requirements. Work may proceed in accordance with established BNL and departmental work control procedures. No further documentation or Davis-Bacon review is required.
<b>Step 5</b>	<p>If the work includes construction-type activities, with costs exceeding \$2000 and does not meet the definition of "maintenance," it may still be exempt from Davis-Bacon requirements. The work may meet one or more of the exclusions listed in the exhibit <a href="#">Exclusions from Davis-Bacon Compliance</a>. The Davis-Bacon Coordinator must enter the appropriate four-digit exclusion code in the <a href="#">Davis-Bacon Log</a>. No further documentation is required and the Davis-Bacon Coordinator authorizes work to proceed according to established BNL and departmental work control procedures.</p> <p><b>Note:</b> The BNL Davis-Bacon Committee, together with DOE, will periodically audit Log Book entries to ensure consistency in the interpretation of the Davis-Bacon law during the screening process.</p>
<b>Step 6</b>	<p>If the work includes construction-type activities and does not meet the exclusion requirements listed in the exhibit Exclusions from Davis-Bacon Compliance, the Department/Division Davis-Bacon Coordinator</p> <ul style="list-style-type: none"> <li>• must defer the screening process to the BNL Davis-Bacon Committee;</li> <li>• tells the Requestor to complete Part I of the <a href="#">Davis-Bacon Screening Document</a> (DBSD) or download the <a href="#">Davis-Bacon Screening Program Database</a> to complete the screening.</li> </ul> <p><b>Note:</b> Downloading the Davis-Bacon Screening Program Database is optional. Either complete the form or use the database.</p>
<b>Step 7</b>	<p>The Requestor completes Part I of the DBSD. The Requestor signs and sends the original document to the Department/Division Davis-Bacon Coordinator.</p> <p><b>Note:</b> The Requestor also should send an information copy to the department Work Control Coordinator.</p>
<b>Step 8</b>	<p>The Department/Division Davis-Bacon Coordinator, with the aid of the Requestor, completes Part II of the DBSD, signs and sends it to the BNL Davis-Bacon Committee Chair. The Davis-Bacon Coordinator also sends copies of the signed form to the Requestor and the Work Control Coordinator.</p>

<b>Step 9</b>	The BNL Davis-Bacon Committee reviews the DBSD. The Committee may ask the Department/Division Davis-Bacon Coordinator for clarification if the scope of work is not clearly defined. The Committee completes Part III and records the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) that apply to this work. The DEAR/FAR are referenced for the "noncovered" as well as the "covered" work.
<b>Step 10</b>	The BNL Davis-Bacon Committee Chair sends the DBSD to DOE for approval by the DOE Davis-Bacon Review Committee Chair.
<b>Step 11</b>	The DOE Davis-Bacon Committee Chair signs and dates the DBSD and returns copies of the Determination to the BNL Davis-Bacon Committee Chair.
<b>Step 12</b>	The BNL Davis-Bacon Committee Chair sends copies of the Determination to the Department/Division Davis-Bacon Coordinator for distribution.
<b>Step 13</b>	The Department/Division Davis-Bacon Coordinator authorizes the Work Control Coordinator to proceed according to established departmental and Laboratory work-planning procedures. See <a href="#">Work Planning and Control for Experiments and Operations</a> Subject Area.

## References

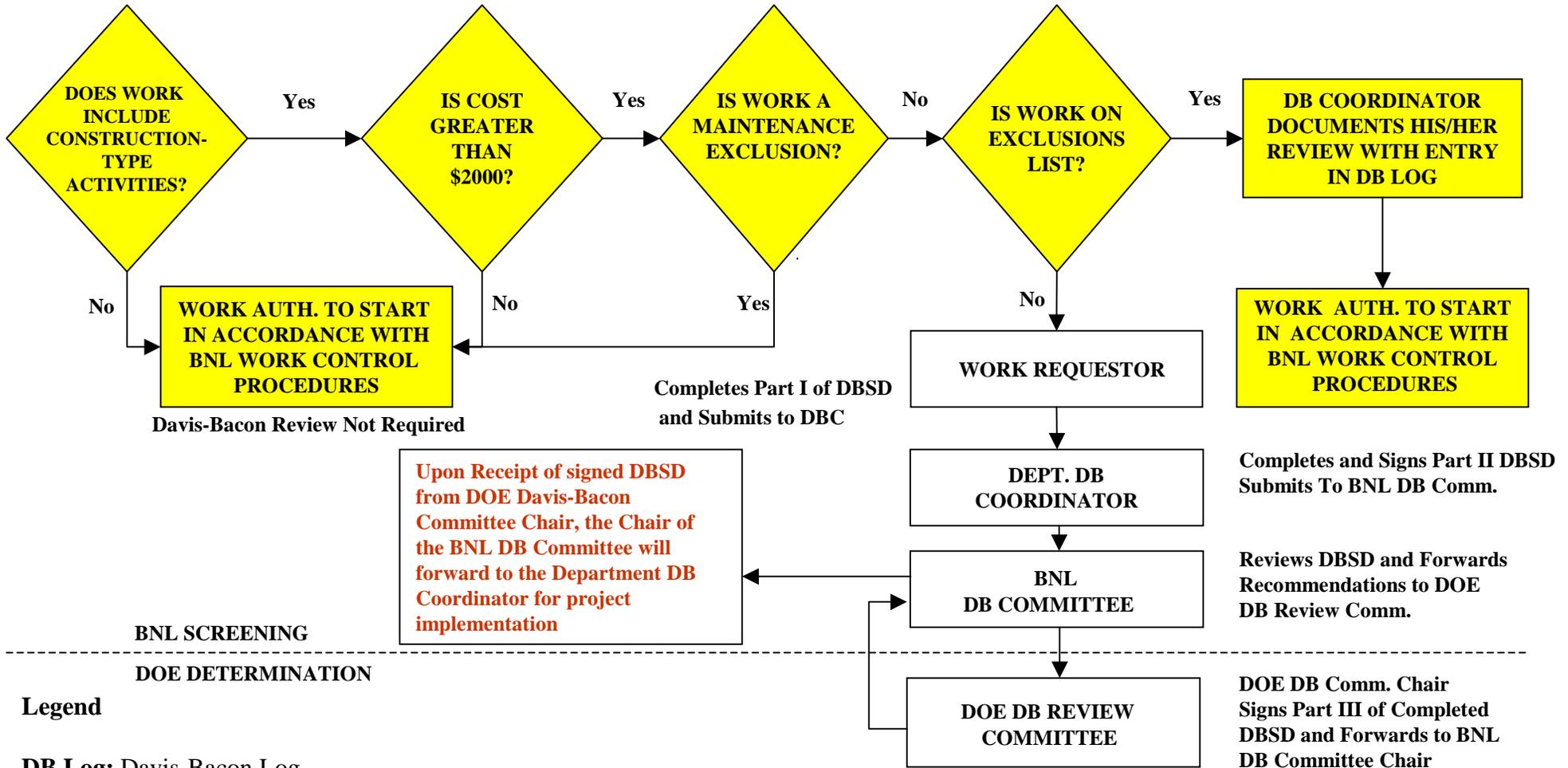
[Project, Planning, Programming and Budgeting Process \(3BPB\)](#) Program Description

[Work Planning and Control for Experiments and Operations](#) Subject Area.

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1.3-112003/standard/30/3001d011.htm

# DAVIS-BACON SCREENING/DETERMINATION FLOWCHART



**Legend**

**DB Log:** Davis-Bacon Log

**DB Coordinator:** Department/Division Davis-Bacon Coordinator

**DBSD:** Davis-Bacon Screening Document

**Applies to Category 6 Activities Only**



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Subject Area: **Davis-Bacon Act**

**Davis-Bacon Screening Program Database**

Effective Date: **October 2001**

Point of Contact: [Davis-Bacon Committee Chair](#)

Using the Davis-Bacon Screening Program Database as a tool for screening construction-type work is optional. Use either the database to log in the Department/Division Davis-Bacon Screenings or complete the Davis-Bacon Screening Document.

**Download the appropriate database to your workstation. Do not open the database from the SBMS site. It will not work effectively.**

Davis-Bacon Screening Program Database	<a href="#">Access 97</a>
Davis-Bacon Screening Program Database	<a href="#">Access 2000</a>

Use the following Word files to assist you when screening work:

<a href="#">Labor Standards for Construction</a>	Discusses the application of labor standards for contracts involving construction.
<a href="#">Part 970 Rewrite Conversion Table</a>	Shows how the final rule published on December 22, 2000 (65 FR 80994) reorganized and renumbered Part 970.
<a href="#">Subpart 22.4-Labor Standards for Contracts Involving Construction</a>	Implements the statutes which prescribe labor standards requirements for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works.

1.0-102001/standard/30/3006e011.htm

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Subject Area: **Davis-Bacon Act**

## Exclusions from Davis-Bacon Compliance

Effective Date: **October 2001**

Point of Contact: [Davis-Bacon Committee Chair](#)

The Department of Energy Acquisition Regulations (DEAR) and the Federal Acquisition Regulations (FAR) exclude certain activities from Davis-Bacon compliance. These exclusions, however, do not constitute an automatic waiver, and each activity must be evaluated on the basis of the scope of work and anticipated method of accomplishment.

If an activity is deemed to be excluded, the Department/Division Davis-Bacon Coordinator must enter it in the [Davis-Bacon Log](#). The four-digit exclusion code listed below also should be entered.

Logbooks will be audited at regular intervals by DOE and/or the BNL Davis-Bacon Committee to ensure consistency in the use of the exclusion codes

### Exclusion Codes

**1.6.3.1** Work is scientific or experimental.

**1.6.3.2** Work is for experimental development of equipment, devices, or processes, and/or equipment is assembled for the sole purpose of conducting a test or experiment.

**1.6.3.3** Work is only for the assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, or calibration of machinery and equipment.

**1.6.3.4** Work is only for decontamination, washing, scrubbing, or scraping to remove contamination and/or removal of contaminated soil or other materials.

**1.6.3.5** Emergency work, resulting from the effects of fire, flood, earthquake, equipment failure, accident or other casualty, or the effort required to restart the operational activity following such casualty.

**1.6.3.6** The sole purpose of the work is for furnishing equipment or materials.

**1.6.3.7** Maintenance work, including the award of maintenance service contracts.

**The only official copy of this file is the one online in SBMS. Before using a printed copy, verify that it is the most current version by checking the document effective date on the BNL SBMS website.**

1.0-102001/standard/30/3005e011.htm

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## Labor Standards for



## Construction

[Reference: FAR 22.4]

### Overview

This section discusses the application of labor standards for contracts involving construction. While the FAR provides detailed guidance for the application of these labor statutes, this chapter provides DOE's acquisition community examples of when the statutes may apply to specific situations. This guidance, along with the FAR requirements, gives DOE personnel the kind of information needed to make decisions regarding application of relevant labor laws to Government contracts.

**Guiding Principle**  
✓ Contracting Officers' compliance with construction labor statutes ensures fair and uniform contracting and payment practices for private sector employees who perform construction work for the Federal Government.

## Background

FAR 22.4 provides guidance to Contracting Officers for applying statutory requirements to contracts that involve construction. The statutes addressed in FAR are

- The Davis-Bacon Act
- The Copeland (Anti-Kickback) Act
- The Contract Work Hours and Safety Standards Act



The following examples identify some of the contractual situations where the above statutes may or may not apply.

### *Land-based prototypes*

The construction of a full-scale operating prototype of a reactor and all necessary nuclear power components, systems, and propulsion equipment for a submarine is subject to the statutes.

In fabricating ship prototypes, the assembling and fitting of components of nuclear steam propulsion units into the hull sections, including installation of the pressure vessels, turbo-generator sets, heat exchangers, control wiring are subject to Davis-Bacon.

### *Paving*

The construction of roads is subject to the statutes. This includes grading and repair of roads when the repair includes work in roadbeds before resurfacing, the building-up of shoulders, forming ditches, culverts and bridges, and the resurfacing of roads.

Recurring-type maintenance work, such as patching surfaces, filling chuck holes, patching shoulders, and resurfacing railroad crossings is not subject to the statutes.

Similarly, patch and maintenance work on a parking lot, the replacement of bumper stops, and the repainting of parking dividers are not subject to the statutes.

### *Stationary boilers*

The construction, alteration and/or repair, including installation and rebuilding, of stationary boilers costing more than \$2,000 for labor and

materials are subject to the statutes. Minor maintenance that is necessary to keep the boiler in safe operating condition is not.

***Start-up of operating activity after fire or other catastrophe***

Rebuilding of a plant following a catastrophe, such as replacement of structural members, roof trusses, walls, roof, utility services, and process piping is subject to the labor statutes.

However, where process equipment can be restarted and/or operational activities resumed prior to such rebuilding, the actual work of start-up, including preliminary activity, e.g., cleaning, drying, checking, adjustment, temporary services, and temporary weather protection of equipment, essential to such resumption of operational activity, is not subject to the statutes.

***Rehabilitation of facilities***

By contrast, with emergency services needed to restore or maintain functional usefulness, rehabilitation of a facility is subject to the labor statutes. This may include painting, change-out, rearrangement and installation of equipment, and the replacement or repair of damaged parts of a structure or of building services or equipment.

In this kind of rehabilitation, the start-up of equipment by operating employees is not subject to the laws.

***Painting***

Although painting and decorating are specifically identified in the Davis-Bacon Act, painting which is closely integrated within operation and maintenance activities and such repainting as color coding of process lines and service piping, including valves and directional arrows, is work that is not subject to the labor laws.

The application of various materials for localizing contamination, painting of machine tools to identify degree of contamination, and preventive maintenance

***Installation, rearrangement and adjustment of equipment***

***During construction.*** In the construction of a new facility, whether a production plant, a laboratory, or supporting facilities, such as shops and warehouses, an integral part of the construction project is the installation of equipment. This includes mechanical equipment, building services, and instruments that permit the facility to be utilized for the intended purpose.

The initial installation, arrangement, adjustment, balancing, calibration, and checking of the equipment is a logical part of the construction contract and is subject to the statutes.

***Plant start-up.*** If, at the time of the turnover of a DOE facility from construction to operating activities, the facility is turned over a section at a time, some issues of statutory coverage may arise.

When personnel of the operating organization perform final test and acceptance of a plant, the effort is not subject to the statutes.

***Equipment and equipment assemblies.***

The Department of Labor has ruled that while contracts in excess of \$10,000 for equipment, including erection or installation, are subject to A contract for furnishing the initial installation of piping, wiring, gas exhaust fans, plumbing, sheet metal work, and related activities to install kitchen baking equipment is comparable to the basic plumbing, wiring, and heating contracts and is subject to statutory requirements.

Alteration or rearrangement of existing facilities involving similar work to accommodate new or different equipment is also covered.

When the installation, rearrangement or adjustment of equipment is not a legitimate part of any current related construction project, it is not subject to the statutes.

***Telephone and utility systems.*** Contracts involving the installation of telephone systems or utilities are not subject to the labor statutes when the work is performed by employees of the telephone or utility company supplying the services, and the material and equipment installed are owned by the telephone or utility company. Such installation is considered to be an extension of the utility's services.

However, a contract for a central telephone system to be installed by the manufacturer and owned by the United States is subject to the statutes. Additionally, relocation of utility lines

the Walsh-Healey Act, they may also be covered under the Davis-Bacon Act where more than an incidental amount of work is involved. Examples include furnishing and installing mechanical equipment such as elevators or generators requiring prepared foundations or housing.

to accommodate construction of a public work is subject to the statutes.

***Maintenance Contracts***

Contracts for servicing or maintenance work are not ordinarily subject to the labor standards requirements of FAR 22.4. Maintenance includes the routine, recurring kind of work that is necessary to keep a facility in an efficient operating condition.

However, if a maintenance or service contract calls for substantial and segregated tasks for construction, alteration or repair, the labor standards apply to that portion of the contractual effort.

**DOE's Role in Construction Labor Relations**

The complexity of the Department's construction program requires a high degree of coordination among contractors, such as when two or more are performing at the same DOE site. Both contracting and program personnel need to be aware of the dynamics involved in these situations.

The following goals summarize key issues that DOE personnel attain when dealing with construction labor issues:

- Effective coordination is established among project contractor management.
- Labor relations practices conform to local customary practices.
- Factors unique to a particular project (such as duration of the project, tenure of employment, housing and travel accommodations, length of regular workweek, uniformity of shift, special

subsidies, etc.) are considered and addressed in project labor agreements.

- Uniform policies are established for employees in similar classifications for all construction employers at the same site.
- Effective working relationships are encouraged between DOE contractors and local employee unions.

### **Headquarters Point of Contact**

Any questions addressing Labor Standards and the requirements of FAR 22.4 should be directed to the Headquarters Office of Worker and Community Transition (WT-1) at (202) 586-7550.

## Part 970 Rewrite Conversion Table

The following conversion table shows how the final rule published on December 22, 2000 (65 FR 80994) reorganized and renumbered Part 970.

Note: The table's "Former Citation" column reflects the DEAR as it was numbered prior to: the "Financial Management Clauses for Management and Operating Contracts" final rule (65 FR 21371, April 21, 2000); the Costs Associated with "Whistleblower Actions" final rule (65 FR 62299, October 18, 2000); and the "Revision of Patent Regulations Relating to DOE Management and Operating Contracts" interim final rule (65 FR 68932, November 15, 2000).

<u>New citation</u>	<u>Former citation</u>	<u>Title</u>
970.2204-1-1	970.2273	Administrative Controls and Criteria for Application of the Davis-Bacon Act in Operational or Maintenance Activities.

970.2204-1-1 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

970.2204-1-1 -- Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular work items falling within one or more of the following criteria normally will be classified as noncovered by the Davis-Bacon Act, hereinafter referred to in this section as the "Act."

(1) Individual work items estimated to cost \$2,000 or less. The total dollar amount of the management and operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of \$2,000, shall be artificially divided into portions less than \$2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a 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. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to DOE operating requirements, if performed by persons other than the contractor's regular production and maintenance forces. However, any decision that contracts or work items are noncovered for these reasons must be made by the Head of the Contracting Activity without power of delegation.

(3) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. However, it is noted that these activities are covered if they are part of, or would be a logical part of, the construction of a facility, or if construction-type work which is not "incidental" to the overall effort is involved.

(4) Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processes, and devices, which are assembled for conducting a test or experiment. The design may be only conceptual in character, and professional personnel who are responsible for the experiment participate in the assembly. Specifically excluded from the category of experimental development are buildings and building utility services, as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing (e.g., a machine to be continuously used for testing the tensile strength of structural members).

(5) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices, which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel who are responsible for the test or experiment and/or data to be derived therefore must, by necessity, participate in the assembly and interconnections. Specifically excluded from experimental work are buildings, building utility services, structural changes, drilling, tunneling, excavation, and back-filling work which can be performed according to customary drawings and specifications, and utility services of modifications to utility services, as distinguished from temporary connections thereto. Work in this category may be performed in mines or in other locations specifically constructed for tests or experiments.

(6) Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident, or other casualties, and to restart the operational activity following the casualty. Work which is not directly related to restarting the activity or which involves rebuilding or replacement of a structure, structural components, or equipment is excluded from this category.

(7) Decontamination, including washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material; and painting or other resurfacing, provided that such painting or resurfacing is an integral part of the decontamination activity and performed by the employees of the contractors performing the decontamination.

(8) Burial of contaminated soil waste or contained liquid; however, initial preparatory work readying the burial ground for use (e.g., any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered. Work performed subsequent to burial, which involves the placement of concrete or other like activity, is also covered.

(b) The classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as outside coverage of the Act since it may be necessary to separate work which should be classified as covered. Therefore, the Heads of Contracting Activities shall establish and maintain controls for the careful scrutiny of proposed work assignments under such contracts to ensure that

(1) Contractors whose contracts do not contemplate the performance of work covered by the Act with the contractor's own forces are neither asked nor authorized to perform work within the scope of the Act. If the actual work assignments do involve covered work, the contract should be modified to include applicable provisions of the Act.

(2) Where covered work is performed by a contractor whose contract contains provisions required by the Act, such work is performed as required by law and the contract. After the contractor has been informed, as provided in paragraph (b)(3) of this subsection, that certain work is covered, the responsibilities of the Head of the Contracting Activity to assure compliance is the same as it would be if the work were being performed under a separate construction contract.

(3) Controls provided for above include consideration by the Head of the Contracting Activity and the contractor, before work is begun or contracted out, of the relation of the Act to the annual programming of work; the contractor's work orders; and work contracted out in excess of \$2,000. The Head of the Contracting Activity may, if consistent with DOE's responsibilities as described in this subsection, prescribe from time to time classes of work as to which applicability or nonapplicability of the Act is clear, for which the Head of the Contracting Activity will require no further DOE determination on coverage in advance of the work. For all work, controls to be established by the Head of the Contracting Activity should provide for notification to the contractor before work is begun as to whether such work is covered. The Head of the Contracting Activity is responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for project area or installation wage determinations, or individual determinations, or extensions or modification thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(c) Experimental installations. Within DOE programs, a variety of experiments are conducted involving materials, fuels, coolants, and processing equipment. Certain types of situations where tests and experiments have presented coverage questions are described as follows:

(1) Set-ups of device and/or processes. The proving out of investigative findings and theories of a scientific and technical nature may require the set-up of various devices and/or processes at an early, pre-prototype stage of development. These may range from laboratory bench size to much larger set-ups. As a rule, these set-ups are made within

established facilities (normally laboratories), required utility connections are made to services provided as a part of the basic facilities, and the activity as a whole falls within the functional purpose of the facility. Such set-ups are generally not covered. However, the erection of structures, which are public works, is covered if construction type work, other than incidental work, is involved. Preparatory work for the set-up requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered. The following are illustrations of noncovered set-ups of devices and/or processes:

(i) Assembly of piping and equipment within existing "hot cell" facilities for proving out a conceptual design of a chemical processing unit;

(ii) Assembly of equipment, including adaptation and modification thereof, in existing "hot cell" facilities to prove out a conceptual design for remotely controlled machining equipment;

(iii) Assembly of the first graphite pile in a stadium at Stagg Field in Chicago;

(iv) Assembly of materials and equipment for particular aspects of the direct current thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy injection and to collect data thereon.

(2) Loops. Many experiments are carried on in equipment assemblies, called loops, in which liquids or gases are circulated under monitored and controlled conditions. For purposes of determining coverage under the Act, loops may be classed as loop facilities or as loop set-ups. Both of these classes of loops can include in-reactor loops and out-of-reactor loops. In differentiating between clearly identified loop set-ups and loop facilities, an area exists in which there have been some questions of coverage, such as certain loops at the Material Test Reactor and at Engineering Test Reactor and the Idaho National Engineering and Environmental Laboratory site. Upon clarification of this area, further illustrations will be added. In the meantime, the differentiation between loop set-ups and loop facilities must be made on a case-by-case basis, taking into account the total criteria set forth in this subpart.

(i) Loop set-ups. The assembly, erection, modification, and disassembly of a loop set-up is noncovered. A noncontroversial example of a loop set-up is one which is assembled in a laboratory, e.g., Oak Ridge National Laboratory, Argonne National Laboratory, or Lawrence Livermore National Laboratory, for a particular test and thereafter disassembled. However, preparatory work for a loop set-up requiring structural changes or modifications of basic utility services as distinguished from connections thereto is covered, as are material and equipment that are installed for a loop set-up which is a permanent part of the facility or which is use for a succession of experimental programs.

(ii) Loop facilities. A loop facility differs from a loop set-up in that it is of a more permanent character. It is usually, but not always, of greater size. It normally involves the building or modification of a structure. Sometimes it is installed as a part of construction

of the facility. It may be designed for use in a succession of experimental programs over a longer period of time. Examples of loop facilities are the in-reactor "K" loops at Hanford and the large Aircraft Nuclear Propulsion loop at the Idaho National Engineering and Environmental Laboratory site. The on-site assembly and erection of such loop facilities are covered. However, once a loop facility is completed and becomes operational, the criteria set forth in this paragraph for operational and maintenance activities apply.

(3) Reactor component experiments. Other experiments are carried on by insertion of experimental components within reactor systems without the use of a loop assembly. An example of reactor facilities erected for such experimental purposes are the special power excursion test reactors (SPETRs) at the National Reactor Test Site which are designed for studying reactor behavior and performance characteristics of certain reactor components. Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption, and buildings as needed to house the reactor and its auxiliary equipment. The erection and on-site assembly of such a reactor facility is covered, but the components whose characteristics are under study are excluded from coverage. To illustrate, one of the SPETRs planned for studies of nuclear reactor safety is designed to accommodate various internal fuel and control assemblies. The internal structure of the pressure vessel is designed so that cores of different shapes and sizes may be placed in the vessel for investigation, or the entire internal structure may be easily removed and replaced by a structure, which will accept a different core design. Similarly, the control rod assembly is arranged to provide for flexibility in the removal of instrument leads and experimental assemblies from within the core.

(4) Tests or experiments in peaceful uses of nuclear energy. These tests or experiments are varied in nature and some are only in a planning stage. They consist of one or more nuclear or nonnuclear detonations for the purposes of acquiring data. The data can include seismic effects, radiation effects, amount of heat generated, amount of material moved and so forth. Some of these tests are conducted in existing mines, while others are conducted in facilities specifically constructed for the tests or experiments. In general, all work which can be performed in accordance with customary drawings and specifications, as well as other work in connection with preparation of facilities is treated as covered work. Such work includes tunneling, drilling, excavation and back-filling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, and the instrumentation and connection between such material or device and the instrumentation are treated as noncovered work.

(5) Tests or experiments in military uses of nuclear energy. As in 970.2204-1-1(c)(4), these tests or experiments can be varied in nature. However, under this category it is intended to include only detonation of nonnuclear material or nuclear devices. The material or devices can be detonated either underground, at ground level, or above the ground. These tests or experiments have been conducted in, on, or in connection with

facilities specifically constructed for such tests or experiments. As in tests or experiments in peaceful uses of nuclear energy, all work which can be performed in accord with customary drawings and specifications, as well as other work in connection with preparation of facilities are treated as covered work. Such work includes building towers or similar structures, tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear devices and instrumentation are treated as noncovered work.

(d) Construction site contiguous to an established manufacturing facility. As DOE-owned property sometimes encompasses several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment which in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is noncovered, the installation of any such manufactured items on a construction job is covered.

## **FAR**

### **Subpart 22.4--Labor Standards for Contracts Involving Construction**

#### **22.400 Scope of subpart.**

This subpart implements the statutes which prescribe labor standards requirements for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. (See definition of "Construction" in section 22.401.) Labor relations requirements prescribed in other subparts of Part 22 may also apply.

#### **22.401 Definitions.**

"Building" or "work," as used in this subpart, generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of the regulations in this subpart unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

"Construction, alteration, or repair," as used in this sub-part, means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed by the contractor or subcontractor.

"Laborers or mechanics," as used in this subpart, includes--

(a) Those workers, utilized by a contractor or subcontractor at any tier, 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;

(b) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The terms "apprentice" and "trainee" are defined as follows:

(1) "Apprentice" means--

(i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau; or

(ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(c) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(d) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals.

The terms exclude workers whose duties are primarily executive, supervisory (except as provided in paragraph (c) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics. "Public building" or "public work," as used in this subpart, means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. "Site of the work," as used in this subpart, is defined as follows:

(a) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in paragraph (b) of this definition, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."

(b) Except as provided in paragraph (c) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "site of the work," provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) The "site of the work" does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

"Wages," as used in this subpart, means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bonafide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

## **22.402 Applicability.**

(a) *Contracts for construction work.* (1) The requirements of this subpart apply--

(i) Only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality, and only to construction work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the construction contract, or if construction at that site is anticipated by another contract as provided in Subpart 37.3;

(iii) To the manufacture or fabrication of construction materials and components conducted in connection with the construction and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iv) To painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.

(2) The requirements of this subpart do not apply to--

(i) The manufacturing of components or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving construction, alteration, or repair of a public building or public work);

(iii) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(iv) Employees who work at contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to or from the site of the work.

(b) *Nonconstruction contracts involving some construction work.* (1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if--

(i) The construction work is to be performed on a public building or public work;

(ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Davis-Bacon Act (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(iii) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The requirements of this subpart do not apply if--

(i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The construction work is so merged with non-construction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

## **22.403 Statutory and regulatory requirements.**

### **22.403-1 Davis-Bacon Act.**

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a clause (see 52.222-6) that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

### **22.403-2 Copeland Act.**

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

### **22.403-3 Contract Work Hours and Safety Standards Act.**

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts (see 22.305) contain a clause (see 52.222-4) specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay (see 22.301).

### **22.403-4 Department of Labor regulations.**

Under the statutes referred to in this 22.403 and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp, p. 1007), the Secretary of Labor has issued regulations in Title 29, Subtitle A, *Code of Federal Regulations*, prescribing standards and procedures to be observed by the Department of Labor and the Federal contracting

agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart. The Department of Labor regulations include--

- (a) Part 1, relating to Davis-Bacon Act minimum wage rates;
- (b) Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and inspection of weekly payroll records;
- (c) Part 5, relating to enforcement of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act;
- (d) Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback) Act, and Service Contract Act, and by which Administrative Law Judge hearings are held; and
- (e) Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Wage Appeals Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-Kickback) Act. All questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection shall be referred to the Administrator, Wage and Hour Division.

## **22.404 Davis-Bacon Act wage determinations.**

The Department of Labor is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work including drivers who transport to or from the site materials and equipment used in the course of contract operations. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

### **22.404-1 Types of wage determinations.**

(a) *General wage determinations.* (1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the *Federal Register* by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract. These determinations shall be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published weekly in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." Notices of general wage determinations are published in the *Federal Register*. General wage determinations are effective on the publication date of the notice or upon receipt of the determination by the contracting agency, whichever occurs first.

(3) The GPO publication is available for examination at each of the 50 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. Subscriptions may be obtained by contacting:

Superintendent of Documents  
U.S. Government Printing Office  
Washington, DC 20402.

The GPO publication is divided into three volumes East, Central, and West, which may be ordered separately. The States covered by each volume are as follows:

(4) On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed providing any modifications or superseded wage determinations issued. Each volume's annual and weekly editions will be provided in loose-leaf format.

(b) *Project wage determinations.* A project wage determination is issued at the specific request of a contracting agency. It is used only when no general wage determination applies, and is effective for 180 calendar days from the date of the determination. However, if a determination expires before contract award, it may be possible to obtain an extension to the 180-day life of the determination (see 22.404-5(b)(2)). Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract.

## **22.404-2 General requirements.**

- (a) The contracting officer shall ensure that only the appropriate wage determinations are incorporated in solicitations and contracts and shall designate the work to which each wage determination or part thereof applies.
- (b) If the wage determination is a general wage determination or a project wage determination containing more than one rate schedule, the contracting officer shall either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule shall be applied. Inclusion by reference is not permitted.
- (c) The Wage and Hour Division has issued the following general guidelines for use in selecting the proper schedule(s) of wage rates:
- (1) *Building* construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.
  - (2) *Residential* construction is generally the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.
  - (3) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.
  - (4) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (*e.g.*, "dredging," "water and sewer line," "dams," "flood control," etc.).
  - (5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, guidance shall be sought before the opening of bids, or receipt of best and final offers, from the Administrator, Wage and Hour Division. Further examples are contained in Department of Labor All Agency Memoranda Numbers 130 and 131.

## **22.404-3 Procedures for requesting wage determinations.**

- (a) *Requests for general wage determinations.* If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor. When necessary, a request for a general wage determination may be made by submitting Standard Form (SF) 308, Request for Determination and Response to Request, to the Administrator, Wage and Hour Division, attention: Branch of Construction Contract Wage Determinations.
- (b) *Requests for project wage determinations.* A contracting agency shall submit requests for project wage determinations on SF 308 to the Department of Labor. The requests shall include the following information:
- (1) The location, including the county (or other civil subdivision) and State in which the proposed project is located.
  - (2) The name of the project and a sufficiently detailed description of the work to indicate the types of construction involved (*e.g.*, building, heavy, highway, residential, or other type).
  - (3) Any available pertinent wage payment information, unless wage patterns in the area are clearly established.
  - (4) The estimated cost of each project.
  - (5) All the classifications of laborers and mechanics likely to be employed.
- (c) *Time for submission of requests.* The time required by the Department of Labor for processing requests for project wage determinations varies according to the facts and circumstances in each case. An agency should expect the processing to take at least 30 days. Accordingly, agencies should submit requests to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation.
- (d) *Limitations.* Project wage determinations are effective for 180 calendar days from the date of issuance and apply only to contract awards made within that time period (see 22.404-1(b)). Project wage determinations do not apply to, and shall not be included in, contracts other than those for which they are issued. Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract.
- (e) *Review of wage determinations.* Immediately upon receipt, the contracting agency shall examine the wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

#### **22.404-4 Solicitations issued without wage determinations.**

- (a) If a solicitation is issued before the wage determination is obtained, a notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the solicitation.
- (b) In sealed bidding, bids may not be opened until a reasonable time after the wage determination has been furnished to all bidders.
- (c) In negotiated acquisitions, the contracting officer may open proposals and conduct negotiations before obtaining the wage determination. However, the contracting officer shall incorporate the wage determination into the solicitation before submission of best and final offers.

#### **22.404-5 Expiration of project wage determinations.**

- (a) The contracting officer shall make every effort to ensure that contract award is made before expiration of the project wage determination included in the solicitation.
- (b) The following procedure applies when contracting by sealed bidding:
  - (1) If a project wage determination expires before bid opening, or if it appears before bid opening that a project wage determination may expire before award, the contracting officer shall request a new determination early enough to ensure its receipt before bid opening. If necessary, the contracting officer shall postpone the bid opening date to allow a reasonable time to obtain the determination, amend the solicitation to incorporate the new determination, and permit bidders to amend their bids. If the new determination does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.
  - (2) If a project wage determination expires after bid opening but before award, the contracting officer shall request an extension of the project wage determination expiration date from the Administrator, Wage and Hour Division. The request for extension shall be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. If necessary, the contracting officer shall delay award to permit either receipt of the extension or receipt and processing of a new determination. If the request is granted, the contracting officer shall award the contract and modify it to apply the extended expiration date to the already incorporated project wage determination. (See 43.103(b)(1).) If the request is denied, the Administrator will proceed to issue a new project wage determination. Upon receipt, the contracting officer shall process the new determination as follows:
    - (i) If the new determination changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404-1. Otherwise the contracting officer shall award the contract and incorporate the new determination to be effective on the date of contract award. The contracting officer shall equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates.
    - (ii) If the new determination does not change any wage rates, the contracting officer shall award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)
- (c) The following procedure applies when contracting by negotiation:
  - (1) If a project wage determination will or does expire before contract award, the contracting officer shall request a new wage determination from the Department of Labor. If necessary, the contracting officer shall delay award while the new determination is obtained and processed.
  - (2) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination is being obtained. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire before receipt and full processing of the new determination.
  - (3) If the new determination changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that submitted proposals if the closing date has passed. All offerors to whom wage rate information has been furnished shall be given reasonable opportunity to amend their proposals.
  - (4) If the new determination does not change any wage rates, the contracting officer shall amend the solicitation to include the number and date of the new determination and award the contract.

## 22.404-6 Modifications of wage determinations.

(a) *General.* The Department of Labor may modify a wage determination to make it current by specifying only the items being changed or by issuing a "supersedes decision," which is a reissuance of the entire determination with changes incorporated. All project wage determination modifications expire on the same day as the original determination. The need to include a modification of a project wage determination in a solicitation is determined by the time of receipt of the modification by the contracting agency. Therefore, the modification shall be time-date stamped immediately upon receipt by the agency. The need for inclusion of a modification of a general wage determination in a solicitation is determined by the publication date of the notice in the *Federal Register*, or by the time of receipt of the modification (time-date stamped immediately upon receipt) by the contracting agency, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.)

(b) The following applies when contracting by sealed bidding:

(1) A written action modifying a wage determination shall be effective if:

(i) It is received by the contracting agency, or notice of the modification is published in the *Federal Register*, 10 or more calendar days before the date of bid opening, or

(ii) It is received by the contracting agency, or notice of the modification is published in the *Federal Register*, less than 10 calendar days before the date of bid opening, unless the contracting officer finds that there is not reasonable time available before bid opening to notify the prospective bidders. (If the contracting officer finds that there is not reasonable time to notify bidders, a written report of the finding shall be placed in the contract file and shall be made available to the Department of Labor upon request.)

(2) All written actions modifying wage determinations received by the contracting agency after bid opening, or modifications to general wage determinations, notices of which are published in the *Federal Register* after bid opening, shall not be effective and shall not be included in the solicitation (but see subparagraph (b)(6) of this subsection).

(3) If an effective modification is received by the contracting officer before bid opening, the contracting officer shall postpone the bid opening, if necessary, to allow a reasonable time to amend the solicitation to incorporate the modification and permit bidders to amend their bids. If the modification does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the modification.

(4) If an effective modification is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in 22.404-5(b)(2)(i) or (ii).

(5) If an effective modification is received by the contracting officer after award, the contracting officer shall modify the contract to incorporate the wage modification retroactive to the date of award and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates. If the modification does not change any wage rates and would not warrant contract price adjustment, the contracting officer shall modify the contract to include the number and date of the modification.

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination, notice of which is published in the *Federal Register* before award, shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An agency head or a designee may request such an extension from the Administrator. The request must be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The contracting officer shall follow the procedures in 22.404-5(b)(2).

(c) The following applies when contracting by negotiation:

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations notices of which are published in the *Federal Register* before award, shall be effective.

(2) If an effective wage modification is received by the contracting officer before award, the contracting officer shall follow the procedures in 22.404-5(c)(3) or (4).

(3) If an effective wage modification is received by the contracting officer after award, the contracting officer shall follow the procedures in 22.404-6(b)(5).

#### **22.404-7 Correction of wage determinations containing clerical errors.**

Upon the Labor Department's own initiative or at the request of the contracting agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections shall be effective immediately and shall apply to any solicitation or active contract. The contracting officer shall follow the procedures in 22.404-5(b)(1) or (2)(i) or (ii) in sealed bidding, 22.404-5(c)(3) or (4) in negotiations, and 22.404-6(b)(5) after contract award.

#### **22.404-8 Notification of improper wage determination before award.**

(a) Written notification by the Department of Labor received by the contracting officer prior to award that--

(1) A solicitation includes the wrong wage determination or the wrong rate schedule; or  
(2) A wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to 22.404-6.

(b) In sealed bidding, the contracting officer shall proceed in accordance with the following:

(1) If the notification reaches the contracting officer before bid opening, the contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to--

(i) Obtain the appropriate determination if a new wage determination is required;

(ii) Amend the solicitation to incorporate the determination (or rate schedule); and

(iii) Permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(2) If the notification reaches the contracting officer after bid opening but before award, the contracting officer shall delay awarding the contract, if necessary, and if required, obtain the appropriate wage determination. The appropriate wage determination shall be processed in accordance with 22.404-5(b)(2)(i) or (ii).

(c) In negotiated acquisitions, the contracting officer shall delay award, if necessary, and process the notification in the manner prescribed for a new wage determination at 22.404-5(c)(3).

#### **22.404-9 Award of contract without required wage determination.**

(a) If a contract is awarded without the required wage determination (*i.e.*, incorporating no determination, containing a clearly inapplicable general wage determination, or containing a project determination which is inapplicable because of an inaccurate description of the project or its location), the contracting officer shall initiate action to incorporate the required determination in the contract immediately upon discovery of the error. If a required wage determination (valid determination in effect on the date of award) is not available, the contracting officer shall expeditiously request a wage determination from the Department of Labor, including a statement explaining the circumstances and giving the date of the contract award.

(b) The contracting officer shall--

(1) Modify the contract to incorporate the required wage determination (retroactive to the date of award) and equitably adjust the contract price if appropriate; or

(2) Terminate the contract.

#### **22.404-10 Posting wage determinations and notice.**

The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where it can be easily seen by the workers. The contracting officer shall furnish to the contractor, Department of Labor Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects, for posting with the wage rates. The name, address, and telephone number of the Government officer responsible for the administration of the contract shall be indicated in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

#### **22.404-11 Wage determination appeals.**

The Secretary of Labor has established a Wage Appeals Board which decides appeals of final decisions made by the Department of Labor concerning Davis-Bacon Act wage determinations. A contracting agency or other interested party may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by the Administrator has been sought pursuant to 29 CFR 1.8 and denied.

## **22.405 Labor standards for construction work performed under facilities contracts.**

If it is not certain at the time of contract award that construction work may be required under a facilities contract (see 45.301), the clause at 52.222-17, Labor Standards for Construction Work--Facilities Contracts (see 22.407(c)), shall be included in the contract. When covered construction work is necessary after contract award, the contracting officer shall obtain the appropriate wage determination and incorporate it in the contract and identify the item or items of construction work to which the clauses apply.

## **22.406 Administration and enforcement.**

### **22.406-1 Policy.**

(a) *General.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies shall maintain an effective program that shall include--

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

### **22.406-2 Wages, fringe benefits, and overtime.**

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 52.222-6, Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with a hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include--

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (*i.e.*, 1 1/2 times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

### **22.406-3 Additional classifications.**

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at 52.222-6, Davis-Bacon Act, shall require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this subsection are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of SF 1444) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer shall submit a report (including a copy of SF 1444) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 52.222-6 and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

### **22.406-4 Apprentices and trainees.**

(a) The contracting officer shall review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at 52.222-8, Payrolls and Basic Records, to ensure that the contractor has complied with the clause at 52.222-9, Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices, trainees, or helpers without complying with the requirements of the clause at 52.222-9, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

### **.22.406-5 Subcontracts.**

In accordance with the requirements of the clause at 52.222-11, Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

### **22.406-6 Payrolls and statements.**

(a) *Submission.* In accordance with the clause at 52.222-8, Payrolls and Basic Records, the contractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission.* If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) *Examination.* (1) The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to--

(i) The correctness of classifications and rates;

(ii) Fringe benefits payments;

(iii) Hours worked;

(iv) Deductions; and

(v) Disproportionate employment ratios of laborers, apprentices or trainees to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reason, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

## **22.406-7 Compliance checking.**

(a) *General.* The contracting officer shall make checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirements of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See Standard Form 1445.)

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(c) *Special compliance checks.* Situations that may require special compliance checks include --

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information.

## **22.406-8 Investigations.**

Contracting agencies are responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

(a) *Contracting agencies.* The contracting agency shall conduct an investigation if a compliance check (see 22.406-7) indicates that violations may have occurred that are substantial in amount, willful, or not corrected. (See also 22.406-9(a) regarding withholding from contract payments.) The investigation shall include all aspects of the contractor's compliance with contract labor standards requirements, and shall not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, shall not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by and available upon written request from the Administrator, Wage and Hour

Division. Any available Department of Labor files pertinent to an investigation may be obtained upon written request to the Administrator, Wage and Hour Division. None of the material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to any one other than responsible Federal officials charged with administering the contract, without obtaining the permission of the Department of Labor.

(b) *Review of the investigation report.* The contracting officer shall review the investigation report on receipt and make preliminary findings regarding the contractor. Adverse findings that are not supported by other evidence shall not normally be based solely on employee statements that have not been authorized for disclosure by the employee. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(c) *Notification to the contractor.* The contracting officer shall take the following actions upon completing the review:

(1) Provide written notice to the contractor concerning the preliminary findings, proposed corrective actions, and the contractor's right to request that the basis for the findings be made available and to submit written rebuttal information within a reasonable period of time.

(2) Upon request from the contractor, make the basis for the findings available. However, under no circumstances will the contractor be permitted to examine the investigation report. Also, the contracting officer shall not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) If the contractor submits a rebuttal, reconsider the preliminary findings based on information brought out by the rebuttal and notify the contractor of the final findings.

(ii) If no rebuttal is submitted within a reasonable time, the preliminary findings shall be considered final.

(4) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the contracting officer to be due, whether the violation is considered willful or nonwillful. If the request includes liquidated damages, it shall contain a written statement that the contractor may within 60 days request relief from such assessment.

(d) *Contracting officer's report.* (1) After taking the actions prescribed in paragraphs (b) and (c) of this subsection, the contracting officer shall prepare and forward a report of violations including findings and supporting evidence to the agency head or designee. Standard Form 1446, Labor Standards Investigation Summary Sheet, shall be completed and attached as the first page of the report.

(2) After reviewing the contracting officer's report, the agency head or the agency head's designee, shall process the report as follows:

(i) A detailed enforcement report shall be submitted to the Administrator, Wage and Hour Division, within 60 days after completion of the investigation, if--

(A) Underpayments by a contractor or subcontractor total \$1,000 or more;

(B) There is reason to believe that the violations are aggravated or willful (or, also, in the case of the Davis-Bacon Act, there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors);

(C) Restitution has not been effected; or

(D) Future compliance has not been assured.

(ii) If none of the conditions in subdivision (d)(2)(i) of this subsection is present but the investigation was expressly requested by the Department of Labor, only a summary report shall be submitted to the Administrator, Wage and Hour Division. The report shall summarize any violations, including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in subdivision (d)(2)(i) or (ii) of this subsection is present, the case shall be closed and the report retained in the appropriate contract file.

(iv) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001) the report (supplemented if necessary) also shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases, the Administrator, Wage and Hour Division, shall be informed simultaneously of the action taken.

(e) *Department of Labor investigations.* In investigations conducted by the Department of Labor which disclose (1) underpayments totaling \$1,000 or more, (2) aggravated/willful violations (or, in the case of the Davis-Bacon Act, there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors), or (3)

potential assessment of liquidated damages under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the concerned contracting agency an enforcement report detailing violations found and any action taken by the contractor to correct such violations, including any payment of back wages. In investigations disclosing other than in this paragraph (e), the agency will be furnished a letter of notification summarizing the findings of the investigation.

#### **22.406-9 Withholding from or suspension of contract payments.**

(a) *Withholding from contract payments.* If the contracting officer believes a violation exists (see 22.406-8), or upon request of the Department of Labor, the contracting officer shall withhold from payments due the contractor an amount equal to the estimated wage underpayment as well as any estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards Act. (See 22.302.)

(1) Pursuant to the clauses at 52.222-4, Contract Work Hours and Safety Standards Act--Overtime Compensation, and 52.222-7, Withholding of Funds, cross-withholding of funds from any current Federal contract with the same prime contractor, or from any Federally assisted contract with the same prime contractor which is subject to either Davis-Bacon prevailing wage requirements or Contract Work Hours and Safety Standards Act requirements, respectively, is authorized.

(2) If subsequent investigation confirms violations, the contracting officer shall adjust the withholding as necessary. If the withholding was requested by the Department of Labor, the contracting officer shall not reduce or release the withholding without written approval of the Department of Labor.

(3) The withheld funds shall be used as provided in (c) of this subsection to satisfy assessed liquidated damages and, unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the agency upon its own action or upon the written request of an authorized representative of the Department of Labor, shall suspend or cause to be suspended any further payment, advance, or guarantee of funds until the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled, and to cover any liquidated damages which may be due.

(c) *Disposition of contract payments withheld or suspended--(1) Forwarding wage underpayments to the Comptroller General.* Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the contracting officer shall forward to the appropriate disbursing office Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act (40 U.S.C. 276(a)) and/or Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). The contracting officer shall include with the SF 1093 a listing of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief statement of the reason for requiring restitution. Also, the contracting officer shall indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of their claims. The disbursing office shall submit the SF 1093 with attached additional data and the funds withheld (by check) to the Comptroller General (Claims Division).

(2) *Returning of withheld funds to contractor.* When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds shall be paid the contractor in an expeditious manner.

(3) *Limitation on forwarding or returning funds.* If the withholding was requested by the Department of Labor or if the findings are disputed (see 22.406-10(e)), the contracting officer shall not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, funds withheld or collected for liquidated damages shall be disposed of in accordance with agency procedures.

#### **22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include--

- (1) Misclassification of workers;
- (2) Hours of work;
- (3) Wage rates and payment;
- (4) Payment of overtime;
- (5) Withholding practices; and

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(10/2001)

- (6) The applicability of the labor standards requirements under varying circumstances.
- (b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from the Department of Labor.
- (c) When requesting the contractor to take corrective action in labor violation cases, the contracting officer shall inform the contractor of the following:
  - (1) Disputes concerning the labor standards requirements of the contract are handled under the contract clause at 52.222-14, Disputes Concerning Labor Standards, and not under the clause at 52.233-1, Disputes.
  - (2) The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.
- (d) The contracting officer shall promptly transmit the contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division.
- (e) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the Labor Department Wage Appeals Board are conducted in accordance with 29 CFR Part 7.
- (f) The Administrator, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the Administrator finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under Section 3(a) of that Act.

**22.406-11 Contract terminations.**

If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, and the Comptroller General. The report shall include--

- (a) The number of the terminated contract;
- (b) The name and address of the terminated contractor or subcontractor;
- (c) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (d) The amount and number of the replacement contract, if any; and
- (e) A description of the work.

**22.406-12 Cooperation with the Department of Labor.**

- (a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.
- (b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, or the Copeland (Anti-Kickback) Act.

**22.406-13 Semiannual enforcement reports.**

A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall only contain information as to the enforcement actions of the contracting agency and shall be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

**22.407 Contract clauses.**

- (a) The contracting officer shall insert the following clauses in solicitations and contracts in excess of \$2,000 for construction within the United States:
  - (1) The clause at 52.222-6, Davis-Bacon Act.

- (2) The clause at 52.222-7, Withholding of Funds.
- (3) The clause at 52.222-8, Payrolls and Basic Records.
- (4) The clause at 52.222-9, Apprentices and Trainees.
- (5) The clause at 52.222-10, Compliance with Copeland Act Requirements.
- (6) The clause at 52.222-11, Subcontracts (Labor Standards).
- (7) The clause at 52.222-12, Contract Termination-Debarment.
- (8) The clause at 52.222-13, Compliance with Davis-Bacon and Related Act Regulations.
- (9) The clause at 52.222-14, Disputes Concerning Labor Standards.
- (10) The clause at 52.222-15, Certification of Eligibility.
- (b) The contracting officer shall insert the clause at 52.222-16, Approval of Wage Rates, in solicitations and contracts in excess of \$2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.
- (c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under 22.402(b) the requirements of this subpart apply to the construction work, the contracting officer shall insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.
- (d) The contracting officer shall insert the clause at 52.222-17, Labor Standards for Construction Work--Facilities Contracts, in solicitations and contracts, if a facilities contract (see 45.301) may require covered construction work (see 22.402(b)) to be performed in the United States.

# CAPITAL EQUIPMENT PROJECT DATA & AUTHORIZATION FORM

SOURCE OF FUNDS (B&R):

BUDGET AREA:

ACCOUNT NO:

PROJECT TITLE:

DEPT./DIV. EMPLOYEE RESPONSIBLE FOR PROJECT:

NAME:

EXT:

BLDG:

If this is the initial submission of the capital equipment project data & authorization form, all sheets must be filled out for all fabrication projects and for all procurements involving the use of labor either BNL, contract, or as part of a lump sum contract, to either modify or create facilities to utilize this item of capital equipment.  
 For ongoing projects, is this a change in description and/or method of accomplishment?  Yes  No. If yes, all three pages must be completed; if no, only page 1 is required.

SIGNATURE AUTHORIZATION:

GROUP I

GROUP II

AGENCY  
LEVEL III

AGENCY  
LEVEL IV

ARE THE ABOVE EMPLOYEES BRIEFED AND FAMILIAR WITH ALLOWABLE AND UNALLOWABLE COST PROVISIONS? (Y/N):

PROPOSED SCHEDULE:

START PROCUREMENT:

COMPLETE PROJECT:

PRELIMINARY ESTIMATES:

PART 1: BUDGET AUTHORITY

	TOTAL	FY	FY	FY	PRIOR FY(s)
	Uncosted Balance				

BUDGET AUTHORITY BY FISCAL YEAR:

PART 2: COST

A. DIRECT PURCHASES, CONTRACTS & TASK ORDERS:

- (1) M-S-T-C and Equipment
- (2) R&D Subcontracts / Special Procurements

B. SHARED SERVICES:

CENTRAL SHOPS*	HOURS	\$	
BLDG. TRADES (BNL)*	HOURS	\$	
GENERAL LABOR (BNL)*	HOURS	\$	
BLDG. TRADES (C. LABOR)*	HOURS	\$	
OTHER (SPECIFY)	HOURS	\$	

\*ESTIMATES FROM SERVICE GROUPS REQUIRED IF OVER \$50,000

C. DIRECT LABOR:

D. CONTINGENCY:

E. ORGANIZATIONAL BURDEN/ELECT PWR:

F. MATERIAL HANDLING CHARGE:

G. SPACE CHARGE:

H. LABORATORY INDIRECT:

I. PRIOR FY(s) COST:

TOTAL COST:

FACILITY OR OPERATING FUNDS REQUIRED? (Y/N):

IF YES, REFERENCE PROJECT:

SIGNATURES:

(No charges may be accrued or expensed against a new project until all signatures are received)

PREPARED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED FOR DEPARTMENT BY: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED FOR DIRECTOR'S OFFICE BY: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED FOR BUDGET OFFICE BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Account: No.

Title

# CAPITAL EQUIPMENT PROJECT DATA & AUTHORIZATION FORM

1.a Description of equipment to be purchased or fabricated:

1.b Purpose or use:

1.c Environmental, Safety, Health, Quality Assurance, or Construction concerns not indicated elsewhere:

---

2.a Is item to be fabricated available for procurement from commercial sources?  Yes  No

2.b If yes, reason for in-house fabrication:

2.c If no, reason for in-house fabrication rather than contracted fabrication:

---

### 3.0 REVIEWS:

ES&H REVIEW HAS BEEN PERFORMED:  
(PER DEPARTMENT/DIVISION SEAPPM)

\_\_\_\_\_  
DEPARTMENT/DIVISION ES&H COORDINATOR

DATE: \_\_\_\_\_

QUALITY ASSURANCE REVIEW HAS BEEN PERFORMED:  
(PER DEPARTMENT/DIVISION Q.A. PLAN)

\_\_\_\_\_  
DEPARTMENT/DIVISION PRINCIPAL DQAR

DATE: \_\_\_\_\_

BUILDING/SITE IMPACT REVIEW:

\_\_\_\_\_  
BUILDING MANAGER

DATE: \_\_\_\_\_





**U.S. DEPARTMENT OF ENERGY  
FIELD OFFICE – CHICAGO**

**DAVIS-BACON SCREENING DOCUMENT**

**Part I:** *To be completed by Work Requestor* **Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **WBS No:** \_\_\_\_\_

**Department:** \_\_\_\_\_ **ADS No:** \_\_\_\_\_

**Location of Work:** \_\_\_\_\_ **W.O. No:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_ **Project No:** \_\_\_\_\_

**Activity No:** \_\_\_\_\_

**Scope of Work:**

\_\_\_\_\_

Forward Original to Davis-Bacon Coordinator. \_\_\_\_\_

Copy to Work Control Coordinator. Signature

**Part II:** *To be completed by Davis-Bacon Coordinator*

<u>Estimated Project Costs:</u>	<u>Total</u>	<u>Covered Work</u>	<u>Non-Covered Work</u>
1. Engineering		<input type="checkbox"/>	<input type="checkbox"/>
2. Procurement		<input type="checkbox"/>	<input type="checkbox"/>
3. Construction			
a. Lump Sum Contract		<input type="checkbox"/>	<input type="checkbox"/>
b. BNL/TECHS		<input type="checkbox"/>	<input type="checkbox"/>
c. BNL Contract Labor		<input type="checkbox"/>	<input type="checkbox"/>
4. Other		<input type="checkbox"/>	<input type="checkbox"/>
5. Total Costs	<b>\$0</b>		

\_\_\_\_\_  
Department Davis-Bacon Coordinator

Forward Original to Davis-Bacon Committee Chair.     Copies to Work Requester and Work Control Coordinator.

**Part III:** **BNL DAVIS-BACON COMMITTEE REVIEW**

Covered: Reference [DEAR]                       Non-Covered: Reference [DEAR]

\_\_\_\_\_

BNL-DB Committee Chair                      Date                      DOE-DB Committee Chair                      Date

Completed Original to Davis-Bacon Committee Chair.

Davis-Bacon Committee Chair Distributes Copies to Davis-Bacon Coordinator.

Davis-Bacon Coordinator Distributes Copies to Work Control Coordinator and Work Requestor.



Forms

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## Definitions: Davis-Bacon Act

Effective Date: **October 2001**Point of Contact: [Davis-Bacon Committee Chair](#)

Term	Definition
Activity Data Sheet (ADS)	Used by Department/Divisions for submitting projects to the Project Planning, Programming, and Budgeting Process (3PBP) Program for funding. The ADS describes the project and presents justification for funding approval. ADSs are reviewed by prioritization teams and scored in accordance with DOE-approved methodologies.
BNL Davis-Bacon Committee	A BNL committee established to screen all work for applicability to the Davis-Bacon Act. Screenings include General Plant Projects, Operating Funded Projects, Line Items, Accelerator Improvement Projects, Capital Equipment Projects, and all other projects that may have construction-type components.
construction-type work	<p>All types of work being done on a building or the site of the building by laborers and/or mechanics employed by a construction contractor, subcontractor, or BNL Contract Labor forces that fit into one or more of the following categories:</p> <ul style="list-style-type: none"> <li>• Alterations, modifications, and/or remodeling of existing buildings, structures, facilities, and associated earthwork, and all activities associated with the construction of new buildings, structures, facilities, and associated earthwork;</li> <li>• Installation of items fabricated on- or off-site;</li> <li>• Painting and decorating;</li> <li>• Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the work;</li> <li>• Utility runs that are not specifically dedicated to experimental or scientific activities.</li> </ul> <p>Subject to DOE interpretation and concurrence.</p>
covered work	Work that is considered to fall within the umbrella of the Davis-Bacon Act.
Davis-Bacon Act	A law enacted in 1931 that requires minimum wage rates be paid to

	laborers and mechanics employed on the site of Federal contracts. The act states that contracts in excess of \$2000 to which the United States is a party for construction, alteration, or repair of public works, contain a clause that no laborer or mechanic employed directly upon the site of the work receive less than the prevailing wage rates in the area.
Davis-Bacon Control Log	A logbook maintained by each Department/Division to track all Davis-Bacon screenings. May be integrated into the Work Control Log at the discretion of each Department/Division.
Davis-Bacon Coordinator	Individual appointed by each Department/Division responsible for ensuring that all "work" is reviewed for Davis-Bacon applicability, and for documenting this review by logbook entries. The Davis-Bacon Coordinator may be the Work Control Coordinator, Work Planning Supervisor/Manager, Building Manager, or any other individual directly or indirectly responsible for the work. A Department/Division may have several Davis-Bacon Coordinators as the volume of work necessitates.
Davis-Bacon Determination	Activity performed by DOE. Evaluates the scope of each project as it relates to the requirements of the Davis-Bacon Act. The DOE Davis-Bacon Committee Chair is required to sign the determination form authorizing work to proceed before the start of the project.
Davis-Bacon Screening	Activity performed by the Davis-Bacon Coordinator and the BNL Davis-Bacon Committee. Screening evaluates the project scope of work as it relates to the requirements of the Davis-Bacon Act.
Davis-Bacon Screening Document	A standard three-part form used for documenting the screening and determination process for all construction-type work. This document requires the signature of the DOE Davis-Bacon Committee Chair as authorization to proceed with the project before it starts.
DOE Davis-Bacon Committee Chair	The DOE individual responsible for ensuring that all work performed at the Laboratory is reviewed for Davis-Bacon compliance. Has sole authority for making Davis-Bacon determinations.
Funding Authorization Status Sheet (FASS)	Document submitted to DOE by the Program Manager after the results of the project prioritization project (3PBP) are known. A FASS is created for each program, GPP, Special Maintenance (Operating Funded Projects), and Accelerator Improvement Projects (AIP). The FASS identifies each project by title and account numbers, and indicates prior year funding, current year funding, and projected future funding.
maintenance	Day-to-day work that is required to sustain, maintain, and preserve property, utilities, and capital equipment in a condition suitable for it to be used for its designated purpose. This includes preventive, predictive, and corrective (repair) maintenance.
noncovered work	Work that is not considered to fall under the umbrella of the Davis-Bacon Act. Prevailing wages are not required to be paid.

prevailing wages	Wage paid in a geographic region for construction tradespersons as determined by the Department of Labor. Persons performing work that is considered to be covered by the Davis-Bacon Act must be paid prevailing wages.
Project Engineer	Individual responsible for implementing a project, activity, or task.
Project Planning, Programming, and Budgeting Process (3BPB)	Project Planning, Programming, and Budgeting Process that serves to prioritize all requests for Laboratory funding from GPP and Special Maintenance allocations. Requests are generated through Activity Data Sheets (ADSs) that are scored using DOE-authorized methodologies.
Requestor	Individual responsible for implementing a project, activity, or task, usually the Project Engineer.
work	Physical activities involving maintenance, modifications of facilities, setup of machines and/or equipment, and construction of new facilities, systems, or equipment. The scope of "work" can range from installing a new wall outlet to the construction of a new building. Work may be performed by BNL tradespersons, BNL techs, BNL Contract Labor forces, or "outside" contractors. Work can also include "construction-type" activities that are associated with experimental and science programs.
Work Control Coordinator	Individuals appointed for their building, area, or group to screen work requests in accordance with <a href="#">Work Planning and Control for Experiments and Operations</a> Subject Area.

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## Revision History: Davis-Bacon Act

Point of Contact: [Davis-Bacon Committee Chair](#)

### Revision History of this Subject Area

Date	Description	Management System
September 2004 -- Minor Rev 1.4	Life Cycle Asset Management MS has been changed to Real Property Asset Management MS	Real Property Asset Management
October 2001	<p>This subject area describes the procedures, using a graded approach, for screening work for applicability to the Davis-Bacon Act. Davis-Bacon Screenings are required for all construction-type work done at Brookhaven National Laboratory.</p> <p>The Davis-Bacon Act requires that tradespersons doing construction-type work be paid wages that are prevailing in their region. These wages are established by the Department of Labor. BSA's contract with the Department of Energy specifically states that all construction-type work performed at the Laboratory be screened to ensure Davis-Bacon compliance. The procedures for reviewing and documenting Davis-Bacon screenings are categorized as follows:</p> <ul style="list-style-type: none"> <li>• Category 1. General Plant Projects (GPP);</li> <li>• Category 2. Accelerator Improvement Projects (AIP, includes Accelerator &amp; Reactor Additions &amp; Modifications [ARAM] and [ARIM]);</li> <li>• Category 3. Line Item Projects;</li> <li>• Category 4. Capital Equipment</li> </ul>	Life Cycle Asset Management

- |  |                                                                                                                                                                                                                                                             |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | <p>Category 4. Special Equipment<br/>Projects;</p> <ul style="list-style-type: none"><li>• Category 5. Special Maintenance (SM/Operating Funded) Projects and Environmental Management (EM) Projects;</li><li>• Category 6. All Other Activities.</li></ul> |  |
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