

## **Davis-Bacon Act (DBA)**

**1. Where can we obtain additional information?**

For additional information, please visit the U.S. Department of Energy (DOE) Office of Electricity Delivery and Energy Reliability (OE) web site at: <http://www.oe.energy.gov/>

You may also visit the U.S. Department of Labor (DOL) [Wage and Hour Division](#) or call the DOL Wage-Hour Toll-Free Information and Helpline between 8 a.m. and 5 p.m. (in your time zone): 1-866-4US-WAGE (1-866-487-9243).

**2. What circumstances would cause the DBA to apply to the DOE Smart Grid Investment Grant (SGIG) Program?**

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$3.4 billion in funding for OE's SGIG Program. Section 1606 of ARRA specifies that laborers and mechanics employed by contractors and subcontractors on construction projects funded directly by or assisted in whole or in part under ARRA, which includes the DOE-funded SGIG program, must be paid at least the wages rates prevailing in the locality in accordance with the DBA.

The Department of Labor has previously decided that where the public utility is furnishing its own materials and is in effect extending its own utility system, such work is not subject to the DBA. However, new construction undertaken by a contractor or subcontractors would be subject to the Davis-Bacon Act. Undertaking new construction using American Recovery and Reinvestment Act (ARRA) funding will require the contractor to pay the DBA prevailing wage.

**3. Are local government utility employees subject to DBA?**

Local units of government are not considered by the Department of Labor to be contractors or subcontractors, and their workers are not covered by DBA. However, contractors and subcontractors of State and local units of government are DBA-covered. Accordingly, any contracts awarded by the local government utility must include the DBA labor clauses and applicable wage determination(s) for laborers and mechanics performing construction.

**4. If Davis-Bacon Act requirements apply to SGIG Program funded projects, would DOE consider requesting "project wage determinations" from the DOL to address the situations where (a) there is no general wage determination in effect for that county and/or type of construction; or (b) there is no classification in the general wage determination?**

(a) If the utility and the DOE determine that a request for a project wage determination (Project WD) is necessary, the Contracting Officer will make a request for a Project WD from the DOL. Additional information on requesting a Project WD, including the circumstances in which a request for a project wage determination is appropriate, can be found at <http://www.dol.gov/whd/programs/dbra/faqs/page46.htm>.

(b) If there is no general wage determination in effect for a county, a conformance must be requested from DOL. The DOE Contracting Officer will work with the utility to obtain the necessary conformance. Additional information on the conformance process may be found at: [http://www.wdol.gov/db\\_confrmnce.aspx](http://www.wdol.gov/db_confrmnce.aspx)

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5. **There is no published wage determination for meter installation among the general wage determinations and believe this is an area where a project wage determination would be particularly useful.**

The DBA would not be applicable to the installation of meters by the utility. The Department of Labor has previously decided that where the public utility is furnishing its own materials and is in effect extending its own utility system, such work is not subject to the DBA. The result is the same where the utility company may contract out such work for extending its utility system and the equipment remains the property of the utility.

6. **Does “construction, alteration or repair (including painting and decorating),” for purposes of the Davis Bacon Act (Section 24 of the Special Terms), include installation of a smart meter or in-home energy consumption monitoring network equipment in a utility customer’s home?**

No, the DBA would not be applicable to the installation of a smart meter or in-home energy consumption monitoring network equipment in a utility customer’s home. This is equipment installation. The Department of Labor has previously indicated in its Field Operations Handbook, Section 15d06, and Solicitor Opinions, as incorporated into All Agency Memorandum number 38, that “where the public utility is furnishing its own materials and is in effect extending its own utility system, such work is not subject to the DBA. The result is the same where the utility company may contract out such work for extending its utility system and the equipment remains the property of the utility.”

7. **Does “construction, alteration or repair (including painting and decorating),” for purposes of the Davis Bacon Act (Section 24 of the Special Terms), include the installation of consumption monitoring equipment?**

The installation of consumption monitoring equipment would also not be covered by the DBA where the utility is furnishing the equipment and in effect extending its own utility systems and is equipment installation. Further, in addition, if the construction work necessary to install the equipment is of an incidental nature to the furnishing of the equipment, the DBA would not apply. For example, if a few screws are needed to mount a small device to the wall of a home, then the installation of the equipment would be minor and incidental to the equipment purchase and would not be subject to the DBA.

8. **Does “construction, alteration or repair (including painting and decorating),” for purposes of the Davis Bacon Act (Section 24 of the Special Terms), include building towers to transmit meter data back to the utility?**

The building of towers or other new construction undertaken by a contractor or subcontractors would be subject to the DBA. Undertaking new construction using ARRA funding will require the contractor to pay the DBA prevailing wage. Construction consists of the ground preparation and the building of the tower. Once the tower is built and accepted by the utility, then installation of any equipment on the tower would not be covered by DBA.

9. **Is the \$2,000 Davis- Bacon Act threshold based on the entire amount of the contract, including equipment costs, or only on labor costs?**

The \$2,000 DBA threshold applies to the total cost of a contract; it is not based on contract labor costs alone.

10. **What forms are utilities and their contractors to use?**

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Please use the standard DOL forms. Forms are available on the [www.wdol.gov](http://www.wdol.gov) webpage. For example the Certified Payroll form can be found at:  
<http://www.dol.gov/esa/whd/forms/wh347.pdf>

**11. Which workers are covered by DBA and which are not?**

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

**12. Are working foreman covered by the DBA?**

Yes, working foremen are covered for the time they spend working as a laborer or mechanic. Time spent filling out forms or ordering supplies is not DBA-covered work.

**13. Are workers classified as independent contractors or "1099 workers" covered by DBA?**

Yes, workers performing the duties of laborers or mechanics on DBA-covered projects are entitled to DBA wages and must be listed on the contractor's certified payroll record.

**14. Exactly what activities are covered by DBA? Travel time to the job site; time spent loading and unloading trucks; time spent in the warehouse or classroom training?**

The DBA requirements apply to laborers and mechanics employed on the site of work. Time spent at the home office, picking up supplies, traveling to the work site, in classroom training, etc., are not DBA hours. However, the non-DBA hours may count towards overtime for covered workers if DBA hours and non-DBA hours exceed 40 hours in a week.

**15. How do you track overtime if a subcontractor only works a fraction of his hours on a SGIG program project, but works more than 40 hours/week?**

The DOL Wage and Hour Division is responsible for enforcement of Federal overtime pay requirements under the Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act. Additional information is available on the Wage and Hour website at [http://www.dol.gov/esa/whd/overtime\\_pay.htm](http://www.dol.gov/esa/whd/overtime_pay.htm).

**16. Does DBA apply to workers of material suppliers who might deliver materials to a job site?**

No. Material suppliers are not DBA-covered if they spend only an incidental amount of time performing work at the construction site.

**17. Can employers report all activities (labor and non-labor hours) for employees who spend part of their day on an ARRA-funded job site on the certified payroll or must they separate out and list only the labor hours for the reporting requirement?**

Employers must separate out the DBA covered hours from the non-DBA covered hours. Only the hours that a laborer or mechanic performs work on a DBA covered project on the certified payroll; however, the employee's entire earnings and deductions are also indicated on the certified payroll.

**18. Are employers able to take fringe benefit credit against the DBA prevailing wage requirements?**

Wages under the DBA include both the cash wages and "bona fide" fringe benefits that are provided to laborers and mechanics. A covered employer may discharge its prevailing wage

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obligation for the payment of both straight time wages and fringe benefits by (1) paying both in cash, (2) making payments or incurring costs for "bona fide" fringe benefits, or, (3) by a combination thereof. Examples of fringe benefits include health insurance, pension contributions, and paid time off. The use of a company truck or employer required payments into Social Security or worker's compensation insurance are not examples of fringe benefits. Employers can take credit for their bona fide fringe benefit costs towards meeting the applicable prevailing wage rate.

### 19. What wage rate should I use?

The payment of DBA wages is based upon the site where the construction work is performed. The DOL issues general wage determinations for a given area (usually by county) for numerous job classifications (i.e., carpenter, power equipment operators, cement workers, etc.). The employer must assure that the employee is paid at least the prevailing wage rate for the classification of work that the employee performs.

### 20. What is a certified payroll and where can I find a copy with instructions for completing it?

All laborers and mechanics employed on the work site must be paid, unconditionally, *at least once a week*. Covered employers must submit a certified payroll on a weekly basis. The employer must sign the certified payroll, affirming that the information is complete and accurate. Falsification of the certified payroll record can result in debarment from future contracts for up to three years and /or criminal penalties.

A copy of a certified payroll form (WH-347) can be found on the Labor Department's Wage and Hour Division ARRA website at <http://www.dol.gov/esa/whd/recovery/>.

### 21. Does the owner of a contracting company have to be listed on the certified payroll record if they also perform the duties of a laborer or mechanic at the work site? Are owners of the business covered by the DBA?

Bona fide owners who are exempt pursuant to Department of Labor regulations, found at 29 CFR Part 541, are not laborers and mechanics and are not subject to the DBA. DOE recommends that owners of a business who also perform construction work list themselves on the certified payroll and under the column for "Work Classification" insert the word "owner." Additionally, the owner of a contracting or subcontracting company, or authorized officer or employee who supervises the payment of wages must sign the Statement of Compliance for the certified payroll.

### 22. Will it be permissible for weekly certified payrolls to be aggregated and submitted to the Contract Administrator on a monthly basis?

No. Certified payrolls are required to be submitted weekly.

### 23. Would DOE be willing to work with grant awardees and the DOL to address non-wage considerations (e.g., weekly pay requirements) that could significantly increase administrative costs without advancing the goals of the ARRA and SGIG?

While DOE can help direct the grantees to the appropriate offices within DOL, the issue regarding the frequency of payroll is one for the DOL. ARRA specifies that laborers and mechanics employed by contractors and subcontractors on construction projects funded directly by or assisted in whole or in part under ARRA must be paid at least the wage rates prevailing in the locality in accordance with the DBA. The DOL has developed regulations to

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assure compliance with the DBA and those regulations require that all laborers and mechanics employed on the work site must be paid, unconditionally, *at least once a week*. Covered employers must submit a certified payroll on a weekly basis. Only the DOL could grant such a request and DOE is not aware of DOL having done so. There is a DOE-led webinar on completing certified payrolls that may address your compliance questions. The webinar can be found at: <http://apps1.eere.energy.gov/weatherization/>. Other questions may be directed to the relevant Contracting Officer.

**24. Is it acceptable for a recipient utility to maintain electronically created certified payroll from the contractor, if the document has a proper electronic signature?**

Yes, current law establishes that the proper use of electronic signatures on certified payrolls and related compliance statements carry the same legal effect as handwritten signatures. Electronic certification documents are sufficient for compliance purposes under the DBA and may be accepted and maintained by the recipient utility in compliance with its requirement to maintain the records on behalf of DOE. The recipient utilities are responsible for ensuring the accuracy of the electronic signature process, and the proper retention and accessibility of the electronically transmitted documents.

**25. Is it acceptable for contractors to scan the certified payrolls and send the scanned copy to the recipient utility?**

No, scanned documents do not carry the same legal effect as handwritten signatures for DOL enforcement purposes. As such, a contractor may not simply scan the certified payroll and forward to the recipient utility. The recipient utility, in turn, may not maintain such scanned certified payrolls as fulfillment of its requirements to maintain the records on behalf of DOE.

**26. Are there going to be exemptions from DBA pay requirements for workers in training? For example, can utilities or contractors pay a training wage and then have that wage modified to meet the prevailing wage rate once training is completed and the worker starts actual production?**

A training or apprentice wage can be paid only if the trainee is registered in a DOL approved apprenticeship or training program or with a State Apprenticeship Agency recognized by DOL. Otherwise, the individual is to be paid the DBA rate for the classification of work that they are performing regardless of their skill level.

**27. What is the recipient's role in overseeing DBA compliance? Do they include reporting and record keeping requirements?**

As set forth in the Davis-Bacon Act Requirements clause, recipients are responsible as part of their oversight role for ensuring compliance with DBA requirements by contractors and subcontractors. These clauses will specifically identify and clarify the responsibilities of recipients under the SGIG program. These responsibilities include reporting and recordkeeping requirements; obtaining, maintaining, monitoring and reviewing the payroll records of contractors and subcontractors; and assisting DOE in its DBA enforcement responsibilities. DOE is ultimately responsible for ensuring DBA compliance on ARRA funded SGIG projects. Recipient oversight functions are similar to prime and subcontractor DBA compliance responsibilities under a Federal contract.

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### **28. Who is responsible for ensuring contractor compliance as well as timely and accurate reporting from contractors?**

Recipients are responsible for ensuring compliance with DBA requirements by contractors and lower-tier subcontractors. Many of the requirements, including reporting and recordkeeping, flow down contractors and lower-tier subcontractors. Contractors hired by utilities to perform construction work also have compliance responsibilities as well as reporting requirements. The specific responsibilities will be set forth in the DBA clauses, which will be included in the grants and as well as the contracts issued to contractors and lower tier subcontractors. However, DOE is ultimately responsible for ensuring compliance and enforcement of DBA on ARRA funded SGIG projects.

### **29. Is the 3 year retention for certified payrolls on site or off site?**

All certified payroll records must be retained for a period of 3-years after completion of the project. The utility may store the records at an off-site secure storage area out of its on-site offices once it has reviewed the records for accuracy. The records may be maintained either on-site or off-site for the 3-year retention period. The records, whether stored on-site or off-site should be maintained so as to be easily retrieved should DOE, DOL, or an authorized agent require the records for an audit.