

ESSER Information

Davis Bacon Requirements with Federal Funds

When agreeing to obtain Federal funds and signing all assurances you also agreed to the terms listed below. These are requirements that **must** be followed and are not optional. If you fail to meet these requirements future federal funding could be withheld or delayed via Federal law 2 CFR 200.339 *Remedies for noncompliance*.

Use of ESSER II and ESSER III funds for Construction (i.e. windows, floors, doors, building, HVAC, remodel, etc.):

[Davis-Bacon and Related Acts | U.S. Department of Labor \(dol.gov\)](#) - A link to Davis Bacon website for all applicable laws.

When using Federal funds on construction projects, Davis-Bacon requirements must be followed. All projects over \$2,000 require Davis-Bacon:

- Prevailing wage determination must be utilized and included in the **bid documents** with appropriate language; [SAM.gov | Search](#)
- Must use wage determination for your county, the correct year, and the correct DBA Construction Type (Building or Heavy). Once you start with a prevailing wage you use it for the entire project.
- Wages and fringe benefits **MUST** be paid weekly, and overtime must also be paid, if applicable; weekly payroll records submitted for EACH employee.
- Payroll Form (WH-347) to be used (can utilize a different form but must contain all information on Payroll Form (WH-347)).
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>
- All Payrolls must be certified (2nd page of WH-347).
- Contract must be awarded to the lowest responsible bidder.
- Lowest Responsive and Responsible Bidder: The bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable, and who has offered the most advantageous pricing or cost benefit, based on the criteria stipulated in the bid documents. See procurement Federal requirements at 2 CFR 200.317 through 200.327.

If changed to a federal project after bids are collected there must be a change order completed to ensure that Davis Bacon requirements are part of the project.

- Posters must be displayed in an open area at the worksite (cannot be inside a trailer)

Davis-Bacon Poster (WH-1321):

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf> - English

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/davispan.pdf> - Spanish

<https://www.dol.gov/agencies/whd/posters/flsa>

References:

Fact Sheet #66 The Davis Bacon and Related Acts (DBRA) -

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs66.pdf>

Reporting, Notices and Posters, Penalties, Related Acts (Copeland “Anti-Kickback” Act),

<https://webapps.dol.gov/elaws/elg/dbra.htm#RRN>

This is NOT an all inclusive list.

1. Publication for Bids MUST occur in an appropriate newspaper.
2. Bid package must include the wage determination that is in effect as of the date of the public for bids.
3. Keep documentation of the proposals received.
4. Contract awarded documentation must be kept.
5. The contract must be awarded to the lowest responsible bidder or the district must have a reason why the district didn't go with the lowest bidder.
6. Posters and wage determinations must be displayed outside the project area.
7. Weekly Timesheets are required along with the Certification (Form WH347 is the form that can be used or the district may use their own as long as it contains all the necessary information).
8. It would be helpful to consult your legal council for more specific information. This expense can be reimbursed with ESSER II or III allocations.
9. If Davis Bacon procedures are not followed the district may have to return ESSER funds to the US Department of Education.

Coding information for ESSER Expenditures:

- CARES Act ESSER I: 6996
- CRRSA Act ESSER II 6997
- ARP Act ESSER III: 6998

Districts must complete a Reimbursement Request in the GMS to receive reimbursement. Fund Audit Reports and Invoices must be submitted.

Obligation Period for ESSER Expenditures:

- CARES Act ESSER I: **September 30, 2022**
- CRRSA Act ESSER II September 30, 2023
- ARP Act ESSER III: September 30, 2024