



## FACT SHEET

### CAPITAL EXPENDITURES: CONSTRUCTION & DAVIS-BACON



As a pass-through entity for Federal Education funds, the Nebraska Department of Education (NDE) is providing this **Capital Expenditures: Construction & Davis-Bacon Fact Sheet** to assist Federal program subrecipients in the management and implementation of construction projects as they relate to the use of Federal funds.

This information is being provided as general compliance guidance only. Subrecipients of Federal funds should refer to the full text of the regulation provided when undertaking construction projects supported through federal funds. Please note that this **Capital Expenditures, Construction & Davis-Bacon Requirements Fact Sheet** *does not* address Federal requirements specifically related to contracts over the Simplified Acquisition Threshold established in the FAR (Federal Acquisition Regulation) currently set at \$250,000. ***If a school district engages in a facility improvement, capital expenditure, or construction project, see additional Federal requirements specifically related to contracts over the Simplified Acquisition Threshold established in the FAR (Federal Acquisition Regulation) currently set at \$250,000.***

Subrecipients of Federal funds are solely responsible for meeting all applicable Federal regulations.

**This document is not a substitute for the advice of your own attorney and/or law firm licensed to practice law in the state of Nebraska. In reading and applying Federal law, the NDE recommends LEAs seek and obtain the advice of counsel with questions of application, interpretation, and/or to ensure that use of this information is appropriate to your particular situation.**

**Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)  
October 2023**

<https://www.dol.gov/agencies/whd/fact-sheets/66-dbra>

This fact sheet provides general information concerning DBRA.

#### **Coverage**

DBRA requires payment of prevailing wages on federally funded or assisted construction projects.

The Davis-Bacon Act applies to each federal government or District of Columbia contract in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, insurance, and other methods are Davis-Bacon "Related Acts." The "Related Acts" include provisions that apply Davis-Bacon labor standards to most federally assisted construction. Examples of "Related Acts" include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

#### **Basic Provisions/Requirements**

Contractors must pay laborers and mechanics working on the site of the work at least the locally prevailing wages (including fringe benefits), listed in the Davis-Bacon wage determination applicable to the contract, for the work performed. Davis-Bacon labor standards clauses must be included in covered contracts.



The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination. The contractor's obligation to pay at least the prevailing wage listed in the applicable wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid for all hours worked on the site of the work.

Apprentices may be paid less than the rates listed in the applicable wage determination only when they are individually registered in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department, and the terms of the apprenticeship program are met.

Contractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency. They are also required to post the applicable Davis-Bacon wage determination and the Davis-Bacon poster (WH-1321) on the work site in a prominent and accessible place where they can be easily seen by the workers.

### **Davis-Bacon Wage Determinations**

Davis-Bacon wage determinations are published on the System for Award Management (SAM) website for contracting agencies to include them into covered contracts. The "prevailing wages" are determined based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area. Guidance on determining the type of construction, and when multiple wage determinations are applicable to a project, is provided in All Agency Memoranda 130, 131 and 236.

### **Retaliation Is Prohibited**

Retaliation is prohibited against any worker or job applicant for engaging in protected activities. Examples of protected include, but are not limited to, making a complaint to a manager, contractor, contracting agency, or WHD; cooperating in a WHD investigation; requesting payment of wages; refusing to return back wages to the contractor; complaints by a third party on behalf of a worker; consulting with WHD staff; informing another worker about their rights under the DBRA; and testifying at a hearing or trial.

WHD will notify contractors of violation findings and direct them to provide appropriate make whole relief to affected worker(s) and job applicant(s) or take appropriate remedial action, or both, where retaliation has been found to have occurred. Engaging in prohibited retaliation may also be grounds for debarment.

### **Penalties/Sanctions and Appeals**

Contract payments may be withheld in sufficient amounts to satisfy liabilities of the contractor for unpaid wages, and for liquidated damages for overtime violations under the Contract Work Hours and Safety Standards Act (CWHSSA). In addition, violations of the Davis-Bacon labor standards may be grounds for contract termination, contractor liability for any resulting costs to the government, and debarment from future contracts for a period of three years.

Contractors may challenge the Wage and Hour Division's determinations of violations and debarment before an administrative Law Judge (ALJ). Interested parties may appeal ALJ decisions to the Department's Administrative Review Board (ARB). Final ARB decisions may be appealed to and are enforceable through the federal courts.

### **Typical Compliance Issues**

Compliance issues that frequently arise on DBRA projects include:

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
- Incomplete or inaccurate recordkeeping, such as not counting all hours worked or not recording hours worked in each classification by an individual who worked in two or more classifications during a day.
- Failure to maintain a copy of the bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified payrolls weekly.
- Failure to post the Davis-Bacon poster and applicable wage determination at the work site.

### **Relation to State, Local, and Other Federal Laws**

The Copeland "Anti-Kickback" Act prohibits contractors from in any way inducing an employee to give up any part of the compensation to which they are entitled and requires contractors to submit a weekly statement of the wages paid to each worker performing DBRA-covered work.

Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wage and overtime pay requirements under State (and local) laws. Also, overtime pay requirements under CWHSSA and the Fair Labor Standards Act may apply.

Under Reorganization Plan No. 14 of 1950, (5 U.S.C. Appendix 1), the federal contracting or assistance-administering agencies have day-to-day responsibility for administration and enforcement of the Davis-Bacon labor standards provisions and, in order to promote consistent and effective enforcement, the Department of Labor has regulatory and oversight authority, including the authority to investigate compliance.

### **Where to Obtain Additional Information**

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.



# Bonding Requirements & NDE Acceptance of Bonding Policy

## 2 CFR 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## Federal Compliance Monitoring

As part of the NDE’s annual Federal Compliance Monitoring program, staff from the NDE Office of Budget & Grants Management may review records and the subrecipient’s policies/procedures using Federal dollars. The Grant Compliance Auditors will use the requirements of 2 CFR 200 and other applicable Federal Codes and requirements when completing such reviews.

## Technical Assistance

Please feel free to contact NDE staff should you have any questions relative to the contents of this document or the management of construction projects acquired using Federal funds.

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