


Title: <u>Davis-Bacon Act Wage Determinations</u>		Document Number: <u>DUF6-AD-185</u> Revision: <u>0</u>	
Approved by: <u>Carol Ajirogi</u>	Periodic Review: <u>5 years</u>	Job Aid	Effective Date: <u>06/19/2019</u>

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1 PURPOSE

Construction subcontracts in excess of \$2,000 are subject to the Davis-Bacon Act and must include an appropriate Wage Determination issued by the Department of Labor (DOL). This guide describes actions necessary to ensure proper application of Davis-Bacon Act Wage Determinations and Modifications to such determinations, per DOL guidelines.

2 TYPES OF DAVIS-BACON WAGE DETERMINATIONS

2.1 *General Wage Determinations*

A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in subcontracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled. Once incorporated in a subcontract, a general wage determination normally remains effective for the life of the subcontract, unless the Procurement Representative exercises an option to extend the term of the subcontract. If the subcontract includes options to extend the period of performance, the Procurement Representative must follow the guidance included in Section 3.3 of this Job Aid.

2.2 *Project Wage Determinations*

This type of 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.

3 MODIFICATIONS TO GENERAL WAGE DETERMINATIONS

General Wage Determinations and modifications thereto are published on the Wage Determinations OnLine (WDOL) website at www.wdol.gov. Department of Labor Regulations and the Federal Acquisition Regulations set forth strict guidelines regarding the applicability of wage modifications to a specific solicitation and the resultant subcontract award. Specific Procurement Representative action to include a wage modification is required only for those wage modifications which are considered to be "Effective Wage Modifications", as defined in the following sections for Negotiated and Sealed Bid (Invitation for Bid) procurements.

3.1 *Negotiated Procurements*

- [1] Under a negotiated procurement, all modifications to general wage determinations, notices of which are published on the WDOL before award is

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made, are classified as “effective” modifications for the solicitation and must be added by either an amendment to the solicitation or by subcontract modification after award, as prescribed in subparagraphs [a] or [b] below. Modifications published on the WDOL after subcontract award are not “effective” for the procurement and no action is required by the Procurement Representative, unless the subcontract contains options to extend the term of the subcontract, in which case the Procurement Representative is required to follow the guidelines set forth in Section 3.3 below.

[a] Action required when the Procurement Representative receives the “effective modification before subcontract award:

1. If the modification changes any wage rates, and the revised wage rates are greater than the minimum rates included in a Project Labor Agreement for the site, the Procurement Representative shall amend the Solicitation and furnish the wage rate information to all prospective offerors that were sent the 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 shall be given reasonable opportunity to amend their Proposals.
2. If the modification does not change any wage rates, or if wage rate changes are made but they are less than the minimum rates included in a Project Labor Agreement for the site, the Procurement Representative shall amend the Solicitation to include the number and date of the modification and award the subcontract.

[b] Action required when the “effective modification” is received after subcontract award:

1. If the modification changes any wage rates, and the revised wage rates are greater than the minimum rates included in a Project Labor Agreement included with the solicitation, the subcontract shall be modified to incorporate the wage modification retroactive to the date of award, and the subcontract price shall be equitably adjusted for any increased or decreased cost of performance resulting from the changed wage rates.
2. If the modification does not change any wage rates and would not warrant contract price adjustment, or if wage rate changes are made but they are less than the minimum rates included in a Project Labor Agreement included with the solicitation, the subcontract shall be modified to include the number and date of the modification with no change in the subcontract amount.

3.2 *Sealed Bidding*

- [1] The following criteria is used to determine when a wage modification is “effective” for acquisitions using the Sealed Bidding method:

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- [a] A written action modifying a wage determination shall be effective if it is received by MCS, or is published on the WDOL, 10 or more calendar days before the date of bid opening.
- [b] A written action modifying a wage determination shall also be effective if it is received by MCS, or is published on the WDOL, less than 10 calendar days before the bid opening, unless there is not reasonable time available before bid opening to notify the prospective bidders. (If there is not reasonable time to notify bidders, a written report of the finding shall be placed in the subcontract file and shall be made available to the Department of Labor upon request.)
- [c] All written actions modifying wage determinations received by the MCS Procurement function after bid opening, or modifications to general wage determinations published on the WDOL after bid opening, shall not be effective and shall not be included in the Invitation for Bid. However, a modification may apply to such a solicitation if an award is delayed by more than 90 days. In this case, Procurement Representatives shall adhere to the following guidelines:
 - [d] If an award is not made within 90 days after bid opening, any modification to a general wage determination which is published on the WDOL before award, shall be effective for any resultant subcontract unless extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. If the extension is denied by the DOL, the wage modification(s) shall be incorporated after award of the subcontract and the subcontractor's price shall be equitably adjusted for any increased or decreased cost of performance resulting from any changed wage rates.
- [2] On receipt of an "effective wage modification" (see criteria under paragraph 3.2 [1] [a] and [b] above) under a sealed bid procurement, the Procurement Representative shall take the following action:
 - [a] If the "effective modification" is received before bid opening, an addendum to the Solicitation shall be issued to incorporate the wage modification. If the modification makes changes to the wage rates, and the revised wage rates are greater than the minimum rates included in the Project Labor Agreement, the bid opening date shall be extended, if necessary to allow a reasonable time for bidders to amend their bids. If the modification does not change the wage rates, or if wage rate changes are made but they are less than the minimum rates included in the Project Labor Agreement included with the solicitation, and would not warrant amended bids, an addendum to the Solicitation shall be issued to include the number and date of the wage modification.
 - [b] If the "effective modification" is received after bid opening, but before award of the subcontract, the following guidelines apply:
 - 1. If the wage modification changes any wage rates for classifications to be used in the subcontract, the subcontract shall be awarded and the modification incorporated after award, to be effective on the date of subcontract award. This will require the negotiation (after award) of

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an equitable adjustment to the subcontract price if the revised wage rates are greater than the minimum rates included in the Project Labor Agreement included with the solicitation for any increased cost of performance resulting from the increased minimum wage rates.

2. If the wage modification does not change any wage rates, or if wage rate changes are made but they are less than the minimum rates included in the Project Labor Agreement included with the solicitation, the subcontract shall be awarded and a subcontract modification issued to include the number and date of the wage modification, with no change in the subcontract amount.
- [c] If the “effective modification” is received after subcontract award, the Procurement Representative shall modify the subcontract to incorporate the wage modification retroactive to the date of award, and equitably adjust the subcontract price for any increased or decreased cost of performance resulting from the changed wage rates. If the wage modification does not change any wage rates, the subcontract shall be modified to include the number and date of the wage modification.

3.3 *Exercise of Options to Extend Term of Subcontract*

- [1] Each time the Procurement Representative exercises an option to extend the term of a subcontract for construction, or a subcontract that includes substantial and segregable construction work, the Procurement Representative must modify the subcontract to incorporate the most current wage determination.
- [2] If a subcontract with an option to extend the term has indefinite-quantity construction requirements, the wage determination incorporated into the subcontract at the exercise of the option applies to all task orders/releases issued during that option period. The wage determination will be effective for the complete period of performance of those task orders/releases without further revision.
- [3] The Procurement Representative must include in fixed-price subcontracts a provision that specifies one of the following methods, suitable to the interest of MCS or the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an option to extend the term of the subcontract:
 - [a] The Procurement Representative may provide the offerors the opportunity to bid or propose separate prices for each option period. The Procurement Representative must not further adjust the subcontract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the subcontract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years. If this method is used the Procurement Representative shall include the article titled “Davis-Bacon Act—Price Adjustment (None or Separately Specified Method), Attachment A.

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- [b] The Procurement Representative may include in the subcontract a separately specified pricing method that permits an adjustment to the subcontract price or subcontract labor unit price at the exercise of each option to extend the term of the subcontract. At the time of option exercise, the Procurement Representative must incorporate a new wage determination into the subcontract, and must apply the specific pricing method to calculate the subcontract price adjustment. An example of a subcontract pricing method that the Procurement Representative might separately specify is incorporation in the solicitation and resulting subcontract of the pricing data from an annually published unit pricing book (e.g., the R.S. Means Cost Estimating System, or the U.S. Army Computer-Aided Cost Estimating System), which is multiplied in the subcontract by a factor proposed by the subcontractor (e.g., .95 or 1.1). At option exercise, the Procurement Representative incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic subcontract. The Procurement Representative must not further adjust the subcontract price as a result of the incorporation of the new or revised wage determination. If this method is used the Procurement Representative shall include the article titled "Davis-Bacon Act—Price Adjustment (None or Separately Specified Method), Attachment A.
- [c] The Procurement Representative may provide for a subcontract price adjustment based solely on a percentage rate determined by the Procurement Representative using a published economic indicator incorporated into the solicitation and resulting subcontract. At the exercise of each option to extend the term of the subcontract, the Procurement Representative will apply the percentage rate, based on the economic indicator, to the portion of the subcontract price or subcontract unit price designated in the subcontract clause as labor costs subject to the provisions of the Davis-Bacon Act. The Procurement Representative must insert 50 percent as the estimated portion of the contract price that is labor unless the Procurement Representative determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular subcontract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option. If this method is used the Procurement Representative shall include the article titled "Davis-Bacon Act—Price Adjustment (Percentage Method), Attachment B.
- [d] The Procurement Representative may provide a computation method to adjust the subcontract price to reflect the subcontractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the subcontractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the subcontract. Generally, this method is appropriate for use only if subcontract requirements are predominately services subject to the Service Contract Act and the construction requirements are substantial and segregable. The methods used to adjust the subcontract price for

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the service requirements and the construction requirements would be similar. If this method is used the Procurement Representative shall include the article titled "Davis-Bacon Act—Price Adjustment (Actual Method), Attachment C.

4 ATTACHMENTS

Attachment A, DAVIS-BACON ACT—PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD)

Attachment B, DAVIS-BACON ACT—PRICE ADJUSTMENT (PERCENTAGE METHOD)

Attachment C, DAVIS-BACON ACT---PRICE ADJUSTMENT (ACTUAL METHOD)

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**Attachment A, Davis-Bacon Act-Price Adjustment
(None or Separately Specified Method)**

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- [1] The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the subcontract, will apply to that option period.
- [2] The Procurement Representative will make no adjustment in subcontract price, other than provided for elsewhere in this subcontract, to cover any increases or decreases in wages and benefits as a result of-
 - [a] Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the subcontract;
 - [b] Incorporation of a wage determination otherwise applied to the subcontract by operation of law; or
 - [c] An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

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**Attachment B, Davis-Bacon Act-Price Adjustment
(Percentage Method)
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- [1] The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the subcontract, will apply to that option period.
- [2] The Procurement Representative will adjust the portion of the subcontract price or subcontract unit price(s) containing the labor costs subject to the Davis-Bacon Act to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the subcontract in accordance with the following procedures:
 - [a] The Procurement Representative has determined that the portion of the subcontract price or subcontract unit price(s) containing labor costs subject to the Davis-Bacon Act is _____ [Procurement Representative insert percentage rate] percent.
 - [b] The Procurement Representative will increase the portion of the subcontract price or subcontract unit price(s) containing the labor costs subject to the Davis-Bacon Act by the percentage rate published in _____ [Procurement Representative insert publication].
- [3] The Procurement Representative will make the price adjustment at the exercise of each option to extend the term of the subcontract. This adjustment is the only adjustment that the Procurement Representative will make to cover any increases in wages and benefits as a result of-
 - [a] Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the subcontract;
 - [b] Incorporation of a wage determination otherwise applied to the subcontract by operation of law; or
 - [c] An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

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**Attachment C, Davis-Bacon Act-Price Adjustment
(Actual Method)**

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- [1] The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the subcontract, will apply to that option period.

- [2]
 - [a] The Subcontractor states that if the prices in this subcontract contain an allowance for wage or benefit increases, such allowance will not be included in any request for subcontract price adjustment submitted under this clause.

 - [b] The Subcontractor shall provide with each request for subcontract price adjustment under this clause a statement that the prices in the subcontract do not include any allowance for any increased cost for which adjustment is being requested.

- [3] The Procurement Representative will adjust the subcontract price or subcontract unit price labor rates to reflect the Subcontractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Subcontractor as a result of-
 - [a] Incorporation of the Department of Labor's Davis-Bacon Act wage determination applicable at the exercise of an option to extend the term of the subcontract; or

 - [b] Incorporation of a Davis-Bacon Act wage determination otherwise applied to the subcontract by operation of law.

- [4] Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph [3] of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

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**Attachment C, Davis-Bacon Act-Price Adjustment
(Actual Method)**

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- [5] The Subcontractor shall notify the Procurement Representative of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Procurement Representative. The Subcontractor shall notify the Procurement Representative promptly of any decrease under this clause, but nothing in this clause precludes Contractor from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Procurement Representative may reasonably require. Upon agreement of the parties, the Procurement Representative will modify the subcontract price or subcontract unit price in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- [6] Subcontract price adjustment computations shall be computed as follows:
- [a] Computation for subcontract unit price per single craft hour for schedule of indefinite-quantity work. For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original subcontract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the subcontract unit price shall be decreased by that amount if the Subcontractor provides notification as provided in paragraph [5] of this clause.
 - [b] Computation for subcontract unit price containing multiple craft hours for schedule of indefinite-quantity work. For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding subcontract period. The total of these computations for each craft will be added to the current subcontract unit price to obtain the new subcontract unit price. The extended amount for the subcontract line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding subcontract period for computation of the adjustment for a specific subcontract unit of work, the Subcontractor, in agreement with the Procurement Representative, shall estimate the total hours per craft per subcontract unit of work.

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**Attachment C, Davis-Bacon Act-Price Adjustment
(Actual Method)**

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Example: Asphalt Paving-Current Price \$3.38 per Square Yard										
DBA Craft	New WD		Hourly rate paid		Diff.		Actual Hrs	Actual units (sq. yard)		Increase/sq. yard
Equip. Opr.	\$18.50	-	\$18.00	=	\$.50	x	600 hrs./	3,000 sq. yrd.	=	\$.10
Truck Driver	\$19.00	-	\$18.25	=	\$.75	x	525 hrs./	3,000 sq. yrd.	=	\$.13
Laborer	\$11.50	-	\$11.25	=	\$.25	x	750 hrs./	3,000 sq. yrd.	=	\$.06
Total increase per square yard =										\$.29*
* Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers' compensation insurance.										
Current unit price		=	\$3.38	per square yard						
Add DBA price adj.			+ .29							
New unit price			\$3.67	per square yard						

(End of clause)

5 REVISION HISTORY

Revision Number	Summary of Changes
0	<ul style="list-style-type: none"> •Blue sheet/global changes from BWCS to MCS. •General formatting

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