

## VI. BIDDING, CONTRACTING AND LABOR STANDARDS

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#### A. INTRODUCTION

Federal labor standards (also known as "Davis-Bacon") may apply to your project. The Division of Housing and Community Development (DHCD) will make this determination during the time your project representative is drafting the contract. If federal labor standards apply, then federal wage rates will have to be paid to employees.

#### B. APPLICABILITY See Attachment 1: Davis-Bacon Coverage Chart

1. Labor standards apply to all contracts for construction, alteration, or repair of a public building or public work, except as noted below.
2. Labor standards apply to all building or construction financed in whole or in part from federal funds or in accordance with guarantees of a federal agency, except as noted below.
3. Exceptions
  - a. Public works constructed by your own employees, commonly called "force account" work. A letter stating such should be submitted to the DHCD. NOTE: There is no such thing as **private** "force account" work.
  - b. Residential rehabilitation in structures with fewer than eight (8) units.
  - c. Contracts that are part of a project of less than \$2,000 value.
  - d. Construction activities assisted solely by means of loans guaranteed with interest-bearing collateral accounts, where 1) the interest rate is the usual and customary rate on demand accounts; 2) the account is subject only to the usual and customary terms and conditions for collateral accounts; and 3) there is no "substantial likelihood" that the guarantee will be used.
  - e. Economic development projects where federal funds are used only for non-construction activities such as acquisition; machinery and equipment purchase (not including installation); stock (equity) purchase; and operating capital loans where such funds cannot be used for construction

## C. RELEVANT LAWS

1. The Davis-Bacon Act. This act requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the U.S. Department of Labor (USDOL) and are issued in the form of Federal wage rates for each classification of work.

Violation of the Davis-Bacon Act makes the contractor liable for unpaid wages and may result in suspension of payments, contract termination, and suspension or debarment of the contractor from participation in federally funded projects.

2. The Copeland "Anti-Kickback" Act. This act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorizes in writing, and those required by court processes. The act also requires contractors to submit weekly payroll records and Statements of Compliance to the contracting agency. This act applies to all contracts covered by Davis-Bacon.

Violation of the Copeland Act is a felony and may result in termination of the contract or criminal prosecution by the U.S. Government.

3. The Contract Work Hours and Safety Standards Act. This act requires that workers receive "overtime" pay at a rate of one and one-half times their regular hourly pay after they have worked 40 hours in one week. The act applies to all contracts covered by Davis-Bacon.

Violation of this act makes the contractor liable for unpaid wages, liquidated damages of \$10 per employee per day of violation, and, in cases of intentional violation, a fine of \$1,000 and/or six months imprisonment for each offense. Violations may also result in termination of the contract.

## ATTACHMENT 1

### DAVIS-BACON COVERAGE CHART CDBG-FINANCED ACTIVITIES

<u>Financed Activity</u>	<u>Activity Covered?</u>	<u>Related Private Construction Covered?</u>
Land Acquisition	N/A	No
Demolition (no construction on-site contemplated)	No	N/A
Demolition (to be followed by on-site construction)	Yes	<u>No</u> , if the demolition was done by grantee or its contractor before transfer of land to developer.
Off-site Improvements (street work, storm sewers, utility construction, etc.)	Yes	<u>No</u> , if done by a separate contractor.
On-site Improvements (excavation/grading, storm drainage, utility or sewer work, paving/walks/striping, site lighting, landscaping, etc.)	Yes  <u>No</u> , if residential project with less than 8 units.	<u>No</u> , if done by grantee or its contractor before transfer of land to developer. <u>Yes</u> , if improvements are designed and intended to serve building on the site; will be contracted for by same entity having building constructed; will be carried out while contracting entity controls the site.
Cleaning During Construction	Yes	Yes
Cleaning After Construction to Prepare for Occupancy (separate from construction contract)	No	No
Materials Purchase (manufacturing)	N/A	<u>No</u> . No construction involved.
Materials Purchase (building)	N/A	<u>Yes</u> . Purchase of materials is assistance to the construction work.
Equipment, Machinery and Fixtures Purchase (as opposed to installation)	N/A	No
Equipment, Machinery, and Fixtures Installation (as opposed to, or in addition to, purchase)	<u>Yes</u> , if more than incidental amount of construction work involved.*	<u>Yes</u> , if more than an incidental amount of construction work involved in the installation.*
Legal Fees/Accounting Fees	N/A	No
Architectural and Engineering Fees	N/A	No
Construction Management	N/A	No
Tenant Allowances for Non-construction Expenses (furniture, business licenses, etc.)	N/A	No
* Construction work involved in installation is incidental if the cost is 13 percent or less of the total cost of the CDBG-financed equipment; if it is more, a four-part test applies.		

**QUESTIONS AND ANSWERS**  
**About**  
**LABOR STANDARDS**  
**in**  
**CDBG HOUSING PROGRAMS**

Q: Do Davis-Bacon wage rates ever apply to single-family home or duplex rehabilitation?

A: No.

Q: Do Davis-Bacon wage rates ever apply to apartment rehabilitation?

A: Yes. They apply to rehabilitation and/or conversion work in mixed-use buildings and to rehabilitation work in apartment buildings that contain eight or more apartments.

Q: What is a mixed-use building?

A: A mixed-use building is one that contains or will contain both residential and commercial or industrial uses after the rehabilitation/ conversion work is completed.

Q: Is rehabilitation work in a mixed-use building ever exempt from Davis-Bacon wages?

A: Yes. If there are less than eight apartments in the building, and the rehabilitation work is confined to the interior of the apartment(s) or the areas common to the apartments only (e.g., residential hallways, stairways) Davis-Bacon wage rates will not apply. However, no work can be done on siding or utilities that serve the entire building in this case.

Q: We have a ten-unit apartment building where the owner wants to do the rehabilitation work himself. Will this be covered?

A: Yes. Since there are more than seven apartments, Davis-Bacon regulations will apply. The owner must submit a payroll form showing how many hours a day, he works on the project, but need not show any wage information for himself. If he hires someone to help him for any of the work, that person must be paid Davis-Bacon wages. If he subcontracts any part of the work (e.g., plumbing or electrical) the contractor(s) must pay Davis-Bacon wages and file all the required reports.

Q: Would the same rule apply to the owner of a mixed-use building working on his own apartments?

A: Yes.

Q: We have an empty warehouse which the owner wants to convert to apartments. The building will be all residential when it is done. Will Davis-Bacon apply?

A: It depends on the number of apartments he will create. If there will be eight or more units, Davis-Bacon wages will apply. If there will be seven or less, they will not apply.

Q: We have an eight-unit apartment, but only four units need rehabilitation. Will this be covered?

A: Yes. Coverage is determined by the number of units in the building, not by the number to be rehabbed.

Q: Is a single-family dwelling containing a home occupation a mixed-use building?

A: Technically, yes. In practical terms, we do not consider it a mixed-use building unless there have been additions or permanent modifications to the building which make part of it useable only for the business purpose. A spare bedroom used as an office would not count. A beauty parlor added to the side of a home and useable only for that purpose would make the building a mixed-use building.

Q: Our program includes purchasing vacant homes and duplexes and renovating them for resale. Will Davis-Bacon apply?

A: No, Davis-Bacon will not apply.

Q: Part of our program includes renovation work on some Housing Authority-owned apartments in our community. Will this work be covered?

A: Yes. All work on Housing Authority-owned property is covered.

Q: Where can we get the necessary forms and information for complying with Davis-Bacon regulations?

A: If you have further questions regarding the applicability of labor standards, call Darlene Moss at 608-266-7988 or e-mail her at [Darlene.moss@wi.gov](mailto:Darlene.moss@wi.gov).

**NOTE:** If you think, labor standards may apply to any part of your program, please contact the DHCD as soon as possible for assistance