

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM (EECBG)

U.S. DEPARTMENT OF
ENERGY

Energy Efficiency &
Renewable Energy



The Parker Ranch installation in Hawaii

Recovery Act: Davis-Bacon for Recipients of EECBG Grants

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Definition of “Laborers and Mechanics”

- The term *laborer or mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer or mechanic* includes apprentices, trainees, helpers, . . . The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.



Definition of “Laborers and Mechanics” (cont.)

- Thus DBA does not apply to energy auditors, engineers, designers, architects, consultants, etc.
- DBA also does not apply to the employees of tribal governments, even if they are performing laborer/mechanic work

- DBA applies to any projects involving construction funded “in whole or in part” by SEP or EECBG grant funds
- In practice this means that DBA applies to any projects involving construction that have any amount of EECBG or SEP funding



No Requirement that the Project be a Public Building or Public Work

- There is no requirement under the Recovery Act that the project be a public building or public work. Thus Congress made the ARRA DBA requirements applicable to public buildings, to non-public buildings, and to construction that does not involve buildings (e.g. streetlight retrofit).

Overview Of Implementation Responsibilities

Summary of DOE DBA Implementation Responsibilities

- Flow down DBA language in grant agreements
- Coach/educate grantees on DBA requirements: answer questions, hold webinars, post FAQs, etc.
- Make determinations on whether DBA applies to a grantee project
- Monitor grantees for DBA compliance
- Manage corrective actions; involve DOL for enforcement issues
- Report to DOL 2x/year on what's happening with DBA and grantees



Summary of Grant Recipient DBA Implementation Responsibilities

- Flow down DBA language and Wage Determination in all RFP and contracting materials
- Receive weekly certified payrolls from contractors; review them for accuracy; store them for 3 years
- Visit worksites; primarily to interview workers and verify they were actually paid the amount on the certified payroll
- Work to correct any problems; bring in DOE as necessary
- Report to DOE 2x/year (for DOE's report to DOL)



Summary of Contractor's Implementation Responsibilities

- Decide the appropriate job classification for each worker
- Pay employees at least the wage rates indicated in the Wage Determination in your contract
- Provide certified weekly payrolls to the other party in your contract
- Post the DOL's Davis-Bacon poster and the Wage Determination at your worksite
 - <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- Maintain payroll records for three years



- Non-compliant contractors:
 - Will have to pay any back wages to employees
 - May have to pay fines/penalties, including liquidated damages
 - May have to face debarment from federal contracting for 3 years



- **Grantees who are fulfilling their responsibilities** should not be overly worried
 - Main thing that could happen is if contractor is unable to pay back wages (e.g. contractor is bankrupt) grantee may be asked to pay
 - Grantees should withhold payment from non-compliant contractors
 - Grantees should notify DOE of any problems



Implementation For Recipients and Contractors

- RFP materials
 - RFP materials should notify bidders that DBA applies.
 - Information provided to any and all bidders shall include the statement: "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts."
 - RFP materials should include the relevant DOL Wage Determination (and any other applicable wage determination, i.e.: state or tribal requirements).



- Contract documents
 - Contracts between recipients and construction contractors should include the DBA language in your grant terms and conditions
 - Contracts between recipients and construction contractors should also include the relevant and most current DOL Wage Determination (and other applicable wage rates)



Selecting a Wage Determination

- There may be one attached to your grant agreement—if so, use that one
- If not, go to www.wdol.gov and select the appropriate WD for your county and construction type
- Include the WD in all RFP materials and contracts

Subgrantee Responsibilities: Flow Down DBA Language and Wage Determination (cont.)

<http://www.wdol.gov/dba.aspx#0>

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

OR

Browse by [state/territory](#)

OR

By Selection criteria beginning with:

State:



County:



Construction Type: (Type of Construction Under DBA)



WD Number:

[Back](#)

View the latest [modifications and additions](#) to the Davis-Bacon Database.
View the [modifications or additions](#) to Davis-Bacon Wage Determinations due to be issued and published on WDOL.gov.
View [Archived Wage Determinations](#)

Subgrantee Responsibilities: Flow Down DBA Language and Wage Determination (cont.)

General Decision Number: CT100012 07/30/2010 CT12

Superseded General Decision Number: CT20080012

State: Connecticut

Construction Type: Residential

County: New Haven County in Connecticut.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---------------------|------------------|
| 0 | 03/12/2010 |
| 1 | 05/07/2010 |
| 2 | 06/25/2010 |
| 3 | 07/02/2010 |
| 4 | 07/30/2010 |

ELEC0090-004 06/01/2010

Entire County excluding Beacon Falls, Middlebury, Milford, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury and Wolcott Townships

| | Rates | Fringes |
|------------------|----------|---------|
| ELECTRICIAN..... | \$ 35.20 | 20.51 |

ELEC0488-009 06/01/2010

Beacon Falls, Middlebury, Milford, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury and Wolcott Townships

| | Rates | Fringes |
|------------------|----------|---------|
| ELECTRICIAN..... | \$ 34.80 | 21.05 |

ENGIO478-006 04/05/2010

Contractor must pay the equivalent of \$35.20 + 20.51, or \$55.71. Can be any combo of cash + bona fide fringes.

- Any apprentice or trainee rate and classification must be part of a DOL-approved program.



- How do you determine the right job classification?
 - Contractor is responsible for determining what classifications they need
 - What do you do if no exact match?
 - They can try to break a job down into component parts (e.g. the HVAC mechanic might be spending some time doing boilermaker work and other time doing general laborer work)
 - They can seek a conformance, which ultimately gets routed through the DOE Contracting Officer


- Initiated by the Contractor
- May be necessary when the locality where the construction work is being performed has no classification for the specific work.
- What wage rate to propose?
 - Be reasonable, don't lowball. Don't go below lowest published rate for that county
 - If it is skilled labor, think through comparisons (e.g. is it close to an electrician skill level? Or more like a general laborer?)
- More info here: http://www.wdol.gov/db_confmnce.aspx

Sample Conformance Request

AUTHORIZED FOR LOCAL REPRODUCTION

| | | | | |
|--|-------------------------------------|---|---|---|
| REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE | | CHECK APPROPRIATE BOX <input type="checkbox"/> SERVICE CONTRACT <input checked="" type="checkbox"/> CONSTRUCTION CONTRACT | | OMB No.: 9000-0089 Expires: 04/30/2005 |
| Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503. | | | | |
| INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER. | | | | |
| 1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210 | | 2. FROM: (REPORTING OFFICE) Department of Energy National Energy Test Laboratory | | |
| 3. CONTRACTOR State of Arkansas - SEP Grant | | | 4. DATE OF REQUEST | |
| 5. CONTRACT NUMBER 09-DOE-1234567 | 6. DATE BID OPENED (SEALED BIDDING) | 7. DATE OF AWARD 06/20/2009 | 8. DATE CONTRACT WORK STARTED 08/02/2010 | 9. DATE OPTION EXERCISED (if APPLICABLE) (SCA ONLY) |
| 10. SUBCONTRACTOR (IF ANY) Rex Harris d/b/a Rex's HVAC Systems & Repair | | | | |
| 11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED) Repair or replace HVAC systems in multi-family residential buildings over 4 stories | | | | |
| 12. LOCATION (CITY, COUNTY AND STATE) Piggott, Clay County, Arkansas | | | | |
| 13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION NUMBER: <u>AR100127</u> DATED: <u>07/30/2010</u> | | | | |

| a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) | b. WAGE RATE(S) | c. FRINGE BENEFITS PAYMENTS |
|---|-----------------|-----------------------------|
| <p><i>(Use reverse or attach additional sheets, if necessary)</i></p> <p>HVAC Mechanic (Duct and System Installation only) (Baxter County a rural county much like Clay County uses this rate for HVAC Mechanic (duct and system installation).</p> | <p>10.80</p> | <p>0.40</p> |

| | | |
|--|--|---|
| <p>14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE <i>(IF ANY)</i></p> <p>(Rex Harris) </p> | <p>15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE</p> <p>(State Energy Office)</p> | |
| <p>16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE</p> | <p>TITLE</p> | <p>CHECK APPROPRIATE BOX-REFERENCING BLOCK 13.</p> <p><input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE</p> |

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

| | | |
|---|---|-----------------------|
| <p>SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE</p> | <p>TITLE AND COMMERCIAL TELEPHONE NO.</p> | <p>DATE SUBMITTED</p> |
|---|---|-----------------------|

PREVIOUS EDITION IS USABLE

STANDARD FORM 1444 (REV. 12-2001)
Prescribed by GSA-FAR (48 CFR) 53.222(f)

- Contractor provides original copies of weekly certified payrolls to recipient
- Recipient reviews payrolls for accuracy. Recipient will then visit worksites and interview workers to determine if workers were actually paid the amount in the certified payroll



- Recipient will notify contractor of any mistakes and ask for corrective action.
- Recipient should track any mistakes fixed (e.g. a payroll came in with an error, and we worked with the contractor to ensure \$50 of back wages were paid).
- Recipient should notify DOE of any egregious issues or contractors who are not cooperative.

- <http://www.dol.gov/whd/forms/wh347instr.htm>
- 2 parts:
 - Payroll form: can use this form or any other that captures the same information
 - Certification statement: use this language exactly (so it's probably easiest to use the form itself)

Example Certified Payroll: the Payroll Part

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

NAME OF CONTRACTOR OR SUBCONTRACTOR
Hale N. Hardee Construction Co., Inc.

ADDRESS
1 Easy Street, New York, NY

OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO. **20** FOR WEEK ENDING **October 17, 2009** PROJECT AND LOCATION **1st at A Avenue** PROJECT OR CONTRACT NO. **6 - Story Office**

| (1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g. LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER | (2) NO. OF WITH-HOLDING EXEMPTIONS | (3) WORK CLASSIFICATION | (4) DAY AND DATE | | | | | | | (6) TOTAL HOURS | (5) RATE OF PAY | (7) GROSS AMOUNT EARNED | (8) DEDUCTIONS | | | | | (9) NET WAGES PAID FOR WEEK |
|---|---|-------------------------------|------------------|---|---|---|---|----|----|-----------------------|-----------------------|----------------------------------|-------------------|--------|-------------------------|--------|---------------------|---|
| | | | OT. OR ST. | S | W | T | W | T | F | | | | S | FICA | WITH- HOLDING TAX | OTHER | TOTAL DEDUCTIONS | |
| | | | | 6 | 7 | 8 | 9 | 10 | 11 | | | | 12 | | | | | |
| Anderson, Joseph | | Carpenter | 0 | 1 | 1 | 1 | 1 | 1 | | 5 | 35.96 | 899.00 | 67.43 | 179.80 | 17.98 | 265.21 | 633.79 | |
| | | | S | 8 | 8 | 8 | 8 | 8 | | 40 | 17.98 | 899.00 | | | | | | |
| Bedwell, Thomas | | Carpenter | 0 | 1 | 1 | 1 | 1 | 1 | | 5 | 20.03 | 819.35 | 61.45 | 163.87 | 16.39 | 341.71 | 477.64 | |
| | | | S | 8 | 8 | 8 | 8 | 8 | | 40 | 17.98 | 819.35 | | | | | | |
| Larson, Todd | | Carpenter | 0 | 1 | 1 | 1 | 1 | 1 | | 5 | 20.03 | 634.15 | 47.56 | 126.83 | 12.69 | 187.08 | 447.07 | |
| | | | S | 8 | 8 | 8 | 8 | 8 | | 40 | 13.35 | 634.15 | | | | | | |

Example: Payroll Certification Statement

Date **October 17, 2009**

I, **Hale N. Hardee** **President**
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by
Hale N. Hardee Construction Co., Inc. on the
(Contractor or Subcontractor)

6 - Story Office Building

: that during the payroll period commencing on the

11 day of **October 2009**, and ending the **17** day of **October 2009**,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Hale N. Hardee Construction Co., Inc.

from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 78 Stat. 367; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

| EXCEPTION (CRAFT) | EXPLANATION |
|---------------------|--|
| Larson, Todd | \$4.63/HR paid to a fringe benefit plan |
| | |
| | |
| | |
| | |
| | |
| | |

REMARKS:

NAME AND TITLE

Hale N. Hardee, President

SIGNATURE

Hale N. Hardee

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

- Download documents for exercise:
 - Instructions and Wage Determination:
http://www1.eere.energy.gov/wip/pdfs/certified_payroll_exercise_instructions.pdf
 - Sample Payroll:
http://www1.eere.energy.gov/wip/pdfs/sample_certified_payroll.pdf
 - Answer Key:
http://www1.eere.energy.gov/wip/pdfs/certified_payroll_exercise_answer_key.pdf
- Compare payroll to wage determination
- Can you spot any mistakes or items for follow-up/clarification?
- Tips:
 - Is the correct wage determination being used?
 - Has the contractor paid the correct rate for the job classification?
 - Has the contractor paid fringe benefits appropriately?
 - Is the certification signed?
 - Check the math – does the number of hours of DB work correlate to the gross wages paid?
 - Are deductions appropriate?

- Once payroll has been reviewed (and, if necessary, corrected), recipients store records for three years beyond the life of the grant.



- Visit worksite:
 - Look for DBA poster
 - Interview workers
- Employee Interviews—goal is to verify information on the certified payroll
 - No required form or format. Sample is here:
http://gc.energy.gov/documents/EMPLOYEE_INTERVIEW_RECORD.pdf



- Information provided is confidential
- Interview statements should contain:
 - Place and date of interview
 - Name and permanent address of employer/employee
 - Employment status, classification, and actual rate of pay
 - Alleged violations

- DOE must report to DOL semi-annually on DBA compliance
- Report is short and straightforward: number of investigations, number of complaints, results of the investigations, and any back pay owed
 - Current cycle: October 1, 2010 through March 31, 2011
- DOE will initiate data collection a few weeks before report due date

- http://www1.eere.energy.gov/wip/davis-bacon_act.html
 - Recordings of past DBA training webinars
 - Key documents and reference materials, including Desk Guide to DBA (all should download this)
 - Searchable database of FAQs
- DOE Project Officers and DBA team ready to provide direct assistance



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