



A DESK GUIDE TO THE DAVIS-BACON ACT

Prevailing Wage Requirements for Contractors on Federal Contracts and DBA-Covered Federally Financed or Assisted Construction Projects

Introduction.

The U. S. Department of Energy (DOE) has prepared this Desk Guide for the use of contractors and subcontractors performing work on construction projects under a federal contract, or under a statute authorizing federal financial assistance, that requires the application of Davis-Bacon Act (DBA or the Act) prevailing wage requirements. This Desk Guide may also be used by grantees, subgrantees, and federal personnel to administer their respective roles and functions with respect to the DBA.

The objective of this Desk Guide is to provide simple, non-technical guidance to help contractors and subcontractors better understand their obligations under DBA. This objective supports DOE's policy that proper and consistent implementation of contract labor standards, along with full and open compliance by contractors, promotes good business and effective contracting in terms of price, quality of work, speed of delivery, customer satisfaction, and project success.

The guidance provided in this document does not constitute legal advice or substitute for full and careful review of the contract or agreement requiring application of DBA provisions, and compliance with all applicable statutes and regulations.

Questions pertaining to the labor standards, including wage determinations, applicable to specific projects, contracts, or agreements must be addressed to the designated DOE contracting officer. Questions pertaining to the general application of DBA and other labor standards compliance issues may be referred to the Department of Labor's (DOL's) nearest regional office. In addition, the answers to many questions may be found on various DOE websites listed in Appendix A. This Desk Guide does not address contractor obligations under any state prevailing wage laws. Questions pertaining to the application of, or compliance with, various state labor laws should be addressed to the cognizant agency within each state.

The Desk Guide will be updated by revision as additional guidance is received from the Department of Labor, or as circumstances change.



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Prevailing Wage Requirements for Contractors on Federal Contracts and DBA-Covered Federally Financed or Assisted Construction Projects

Chapter 1 Statutes, Regulations, Contract Clauses, Responsibilities.

Section 1-1 Labor Statutes Applicable to Federal Contractors.

a. The Davis-Bacon Act (40 U.S.C. 3141-48).

(1) DBA applies to contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, where the United States or the District of Columbia is a direct party to the contract. DBA specifies that each covered contract contain provisions, found at Title 29 CFR 5.5, requiring contractors to pay the laborers and mechanics employed on the project's site of the work, on a weekly basis, no less than the wages and benefits that are prevailing in the area as determined by the Secretary of Labor. Construction includes activities performed **on the site of the work** such as preparation for construction (*e.g.*, demolition of existing structures, equipment and material set-up, *etc.*), fabrication of materials, installation of materials, and post-construction clean-up. The federal agency awarding the contract must make the determination that DBA applies to the project and must incorporate the applicable DBA clauses and wage determinations (also referred to as "wage decisions") into the requirements of the contract.

(2) A construction “project” may often involve more than one “contract” if all such contracts are closely related in purpose, time, and place (*e.g.*, preparatory demolition contracts and final interior decorating contracts are often separate from the “construction” contract). DBA will apply to all such individual contracts, regardless of amount, if the overall project is in excess of \$2,000.

b. Davis-Bacon and Related Acts (DBRA).

(1) The Davis-Bacon “Related Acts” are numerous statutes that authorize federal assistance such as contributions, grants, loans, insurance, or guarantees for various programs involving construction, alteration and/or repair of hospitals, housing, sewage and water treatment plants, highways, airports, and similar structures. A DBRA will often include language further defining work that must be covered by the DBA prevailing wage requirements. The American Recovery and Reinvestment Act (Public Law 111-5 February 17, 2009) (Recovery Act) is an example of a DBRA statute. The Recovery Act states, “Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor....” In order to implement this Recovery Act requirement, the federal agency awarding the contract or providing the funding assistance must first make the determination that DBA applies to the project under the Recovery Act, and must then ensure that DBA clauses and wage determinations are made applicable to the performance of the work.

(2) Where DOE has determined that DBRA provisions apply, “contract” means contracts and subcontracts for construction, alteration, and/or repair awarded under DOE grants, cooperative agreements, technology investment agreements, loans, and loan guarantees authorized by a statute requiring the payment of DBA wages.

c. The Copeland “Anti-Kickback” Act (40 U.S.C. 3145 and 18 U.S.C. 874) (Copeland Act). The Copeland Act makes it unlawful to induce any person working on a federal contract or on a federally financed or assisted construction project to give up any part of the compensation to which he or she is entitled under his or her contract of employment. The Copeland Act and its regulations require contractors and subcontractors to submit weekly to DOE, as the contracting agency, a copy of all payrolls, along with a weekly “Statement of Compliance” certifying that the contractor has paid the full wages and benefits due the covered workers.

d. The Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq*) (FLSA). FLSA covers most workers employed throughout the United States, including non-exempt workers employed on federal contracts. FLSA requires employers to pay their workers no less than the federal minimum wage (\$7.25/hour as of July 24, 2009), and to pay overtime compensation for hours worked in excess of 40 per week. (See Section 3-3 in this Desk Guide for guidance on overtime requirements.) FLSA also restricts the employment of children less than 18 years of age.

e. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq*) (CWHSSA). CWHSSA applies to certain federal contracts (including contracts for services, construction, or supply) that are in excess of \$100,000 and which may require or involve the employment of laborers or mechanics upon a public work. CWHSSA also applies to federally financed and assisted contracts in excess of \$100,000, where a federal law provides wage standards for the work. CWHSSA does not apply to such contracts where the federal assistance is solely in the nature of a loan guarantee or insurance. CWHSSA requires covered contractors to pay overtime compensation to laborers and mechanics (including watchmen and guards). Similar to the provisions in FLSA, CWHSSA requires overtime compensation to be paid at no less than one and one-half times the worker’s basic hourly rate of pay for hours worked in excess of 40 per week. Failure to comply with the overtime requirements under CWHSSA can result in the contracting agency assessing the contractor liquidated damages computed at \$10/day per violation. CWHSSA also requires covered contractors to ensure that their workers are performing in a safe environment.

Section 1-2 Related Federal Regulations.

- a. “Procedures for Predetermination of Wage Rates” (29 CFR Part 1). DOL regulations that govern the determination of prevailing wage and benefit rates under DBA, the publication of DBA wage determinations, and the procedures for obtaining and using timely DBA wage determinations.

- b. “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States” (29 CFR Part 3). DOL regulations that govern the application and enforcement of DBA, DBRA, and the Copeland Act, and detail the requirements under the Copeland Act for weekly payrolls, statements of compliance, and restrictions on payroll deductions.

- c. “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)” (29 CFR Part 5). DOL regulations governing the responsibilities of federal agencies to administer and enforce the provisions of DBA and DBRA, including applicable contract provisions and definitions of terms such as construction, public buildings and public works, site of work, laborers and mechanics, apprentices and trainees, wages, and bona fide benefits. These regulations outline federal agency responsibilities and procedures for enforcement of DBA and CWHSSA provisions and procedures for resolving disputes concerning payment of wages.

- d. U. S. Department of Energy Regulations. Regulations concerning DBA provisions that are specific to contractors who are party to a direct contract with DOE may be found at 48 CFR Part 970-2204-1-1.

Section 1-3 Responsibilities.

a. Federal Contracting Agency.

(1) As the federal contracting agency directly awarding a contract or providing federal funding assistance for a construction project, **DOE must determine whether DBA or DBRA applies** to a project and, if applicable, to ensure that the appropriate DBA clauses and wage determination(s) are incorporated into the requirements of the project. These standard DBA clauses may be found at 29 CFR 5.5. Clauses modified with DOL approval for DOE-specific programs may be found as follows:

(a) Weatherization Assistance Program –

http://www2.eere.energy.gov/wip/pdfs/dba_clauses_weatherization.pdf

(b) Non-Weatherization Assistance Program (these clauses do not apply to direct federal contracts, loans under the Advanced Technologies Vehicles Manufacturing Program, or Title XVII loan guarantee programs) –

http://www1.eere.energy.gov/wip/pdfs/dba_clauses_non_wap.pdf

(2) As the contracting agency, DOE has **primary responsibility for the enforcement of construction labor standards** for the contracts, financial assistance, and other agreements it awards. The person designated as the contracting officer, as defined in 29 CFR 5.2, is responsible for ensuring that contractors and subcontractors submit timely certified payrolls consistent with contract terms, and for monitoring labor standards compliance by reviewing pay records and conducting worker interviews. (See Section 5-1 of this Desk Guide concerning Compliance Reviews.) DBA- and DBRA-covered contracts resulting from grants, cooperative agreements, technology investment agreements, loans, or loan guarantees, will specifically identify the responsibilities of recipients, subrecipients, local agencies, guaranteed parties, and contractors to administer and enforce the provisions of DBA, including reporting and recordkeeping requirements; obtaining, maintaining, monitoring, and reviewing payrolls; and assisting DOE in its DBA enforcement responsibilities.

b. Prime Contractor.

(1) The **prime contractor** (often referred to as the **principal** or **general** contractor) is responsible for applying the appropriate DBA and CWHSSA labor standards and DBA wage determinations to all subcontracts for work performed by laborers and mechanics on the site of the work for the project. The prime contractor is also responsible for the labor standards compliance of all contractors on the project, including subcontractors at any level. DOE, as the contracting agency, may withhold on its own action, and shall withhold upon written request of DOL, sufficient monies from accrued payments or advances due the prime contractor as may be necessary to cover any underpayment of wages, fringe benefits, or overtime compensation resulting from violations of DBA and CWHSSA provisions. (Reference 29 CFR 5.5.) Financial assistance recipients must ensure contractor and subcontractor compliance with DBA and CWHSSA provisions as set forth in the applicable financial assistance agreement, and may also withhold sufficient monies from accrued payments or advances as may be necessary to cover any underpayment of wages, fringe benefits, or overtime compensation due as a result of DBA or CWHSSA violations.

(2) Under a statute providing loans, grants, or other Federal assistance – a DBRA - “contractor” **does NOT include a unit of a state, local, or tribal government where the construction activities are performed by its own employees.** Any contracts awarded under a DBRA by a state, local, or tribal government, however, must include DBA provisions and the contractors’ laborers and mechanics will be covered by the DBA requirements.

NOTE: DOE Management and Operating Contractors (M&O) and Facility Operations Contractors are not operating under a DBRA, these contracts are funded through annual appropriations. Therefore, an M&O or Facility Operations Contractor that is also a unit of state or local government **is subject to DBA** when performing construction activities with its own employees. 29 CFR section 5.2(h) states:

(h) The term *contract* means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in §5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

To be clear, DOE M&O and Facility Operations contractors **ARE NOT** working under statutes that provide loans, grants, or other Federal assistance.

(3) Many contracts and financial assistance agreements will require the prime contractor to report all subcontracts awarded by the prime contractor. The prime contractor must submit to the contracting officer a completed SF-1413 Statement and Acknowledgment for each subcontract on covered projects within 14 days of the subcontract award. The prime contractor must execute a statement on this form that it has inserted all appropriate labor requirements into its subcontracts, and must include a statement signed by the subcontractor acknowledging that the appropriate clauses have been included in its subcontract. A copy of SF-1413 is included in the Appendices of this Desk Guide, and is also available at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/SF%201413.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/SF%201413.pdf).

c. **U. S. Department of Labor. DOL** has authority under Reorganization Plan No. 14 of 1950 to issue regulations, interpretations and opinions, and prevailing wage determinations under DBA/DBRA. DOL will also conduct investigations and take further steps to enforce the provisions of DBA/DBRA such as withholding of contract funds and conducting hearings to consider debarment of contractors found to be in violation. (See Section 5-3 of this Desk Guide concerning the penalties for violation of contract labor standards.)

Chapter 2 DBA Wage Determinations.

Section 2-1 DBA Wage Determinations. As noted above, when a federal contracting agency such as DOE determines that DBA/DBRA are applicable to a construction project, the agency is

responsible for ensuring that DBA clauses are incorporated into the contract, along with the applicable **DBA wage determination(s)**. DBA wage determinations are issued by DOL and reflect the wages and benefits found to be prevailing for various classifications of workers in the locality (usually a county or group of counties) covered by each wage determination. Contracting agencies access DOL-published **general wage determinations** on www.wdol.gov and select the appropriate DBA general wage determination for each contract action. The contract or agreement for a covered project will contain clauses that direct the prime contractor and all subcontractors to comply with specific wage determination(s). **Any questions concerning which DBA wage determination is applicable to specific work must be addressed to the DOE contracting officer.**

NOTE: As more fully described below in Section 3-1, a DBA wage determination is selected based upon the location where the work will be performed (“site of the work”) and the nature of the construction project. If a project involves work at multiple sites, each with a different DBA wage determination, the contracting officer must insert the DBA wage determination appropriate for each locality. If work is to be performed in a locality not previously identified, the contracting officer must modify the contract and incorporate the DBA wage determination appropriate for that locality.

Section 2-2 General Wage Determinations.

a. Description of DBA General Wage Determinations. General wage determinations are issued not only by locality, but for certain types of construction within a locality, often referred to as “schedules.” For example, DOL will issue wage determinations for building construction (construction of sheltered enclosures with walk-in access, including multi-unit residential buildings five stories or more); highway construction (includes construction of roads, sidewalks, runways, alleyways, trails, paths, parking areas, etc.); residential construction (construction of single family homes and up to four-story apartment buildings); and heavy construction (construction of other public works that do not fit within the other schedules). Some localities also have separate DBA wage determinations for projects involving dredging, water and sewer line construction, dams, major bridges, or flood control.

NOTE: Guidance on the appropriate use of wage determinations in each schedule is noted in DOL’s “All Agency Memoranda #130 and #131” found on the WDOL.gov “Library” at <http://www.wdol.gov/aam.aspx>.

b. Projects Involving Multiple Types of Construction. When a project requires different types of construction, *e.g.*, building construction and highway construction, DOE, as the contracting agency, must incorporate the DBA wage determination for each schedule or type of construction if the separate type of construction comprises at least 20% of the total project cost, and/or costs \$1 million or more. If the separate type of construction comprises work that is only incidental to the total project (*i.e.*, less than 20% and costs less than \$1 million), the separate schedule will not be necessary.

Section 2-3 Project Wage Determinations. If the database for DBA general wage determinations does not contain an appropriate DBA wage determination schedule for the particular type of construction to be performed in a specific locality, the contracting agency, must submit a request to DOL (on **SF-308**, “Request for Wage Determination”) for a **project-specific wage determination**. If virtually all of the work on a contract will be performed by a classification that is not listed on a general wage determination that would otherwise apply, the contracting agency may submit a SF-308 request to DOL for a project-specific wage determination, or may attach the applicable wage determination to the contract and require the contractor to submit to DOL an SF-1444 “Request for Authorization of Additional Classification and Rate” for the missing classification. See Section 3-1 e, of this Desk Guide on “conformances.” DOL will issue a wage determination applicable only for that specific project. Project wage determinations are effective for 180 days from date of issuance, and, if not incorporated into an awarded contract prior to expiration, the contracting agency must request a new project wage determination. DOL has issued project wage determinations uniquely applicable to work performed under DOE’s Weatherization Assistance Program which is funded under the Recovery Act and covered by DBA. As with the application of DBA general wage determinations, it is DOE’s responsibility as the contracting agency to determine the need for

and to request a project wage determination from DOL, and to incorporate it into the project's requirements.

Section 2-4 Timely Application of DBA Wage Determinations. The timely applicability of a DBA wage determination, and any modification issued by DOL for that wage determination, to any particular contract action is addressed in 29 CFR 1.6. It is the responsibility of DOE, as the contracting agency, to ensure that the most current DBA wage determinations are applied in accordance with these requirements. Generally, a DBA wage determination selected for a particular construction project is effective for the life of the project unless there is a substantial change in the scope of work. If, however, the contract contains options to extend the term of the contract, the contracting officer must incorporate the most current DBA wage determination in effect on the exercise of that option.

Section 2-5 Posting DBA Wage Determinations. It is the **responsibility of the prime contractor** to post all applicable DBA wage determinations on the job site in a prominent and accessible location, or to otherwise notify each worker employed on the job site of the wage and benefits due under DBA. DOL Form WH-1321, "Notice to All Employees," is available at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>.

Chapter 3 Contractor Compliance with Contract Labor Standards.

Section 3-1 Worker Classifications under DBA Wage Determinations.

a. **Construction.** DBA applies to contracts for construction, alteration, and/or repair of public buildings or public works, including painting and decorating. Construction also includes activities such as those performed **on the site of the work** in preparation for construction (*e.g.*, demolition, equipment and material set-up, *etc.*), fabrication of materials, installation of materials, and post-construction clean-up. (Reference 29 CFR 5.2(j).)

b. **Site of the Work.** Under DBA, **laborers and mechanics employed on the site of the work** are covered by the Act. The site of the work is the physical place or places where the building or

work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project. Job headquarters, tool yards, batch plants, borrow pits, *etc.*, are part of the site of the work provided they are dedicated exclusively, or nearly so, to performance of the contract or project and provided they are adjacent, or virtually adjacent, to the site of the work. (Reference 29 CFR 5.2(l).)

c. Laborers and Mechanics. DBA applies to **laborers and mechanics working on the covered site of the work**. Laborers and mechanics are defined as workers whose duties are **manual or physical in nature** as distinguished from mental or managerial work. Mechanics include workers who use tools or who are performing the work of a particular trade (*e.g.*, carpentry, plumbing, sheet metal work). (Reference 29 CFR 5.2(m).) Laborers and mechanics do not include individuals performing non-manual work such as supervising, engineering, architecture, timekeeping, clerical work, energy audits, electricity usage monitoring, or other administrative functions.

(1) **Guards and Watchmen.** Guards and watchmen who perform no manual duties on the site of the work are not considered to be laborers or mechanics under DBA. Note, however, for purposes of CWHSSA's overtime compensation and safety requirements, the term "laborers and mechanics" includes watchmen and guards.

(2) **Apprentices and Trainees.** Laborers and mechanics include workers who are registered in approved apprenticeship or training programs. Approved programs are those which have been registered with DOL's Employment and Training Administration, Office of Apprenticeship, or registered with a DOL-recognized State Apprenticeship Council. Workers who participate in approved apprenticeship and training programs are provided documentation as evidence of their enrollment. Apprentices and trainees are paid wage rates in accordance with the provisions listed in the approved program. The rates are generally listed as a percentage to be applied to the wage rate listed in the applicable DBA wage determination for journeymen working in a particular classification. (Reference 29 CFR 5.2(n).)

(a) Under DBA, a **contractor must pay no less than the full wages and benefits of a journeyman**, as listed on the applicable wage determination, **to any worker who is not registered** in an approved program, **or to any worker for whom the contractor has no documentation** evidencing the worker's enrollment in an approved program. Contractors and subcontractors are responsible for obtaining proper documentation to support designating a worker as an apprentice or trainee.

(b) The wage rates listed in an apprenticeship and training program are generally expressed as a **percentage of the journeyman wage rate** for a specific period of time, increasing as the worker progresses through the program (example: 0-6 months 65%; 6 months to 1 year 70%). Apprenticeship programs also **restrict the ratio of apprentices to journeymen** working on a job site in a specific classification. Example: An approved program permits no more than three apprentice plumbers for each journeyman plumber working on the job site. If a contractor or subcontractor employs apprentices in excess of the ratio, all apprentices employed in excess of the ratio are not considered apprentices and are subject to the full journeyman wage requirements. As a practical enforcement policy, DOL will consider the first three apprentices (in this example) employed within the ratio, and workers that are employed subsequent to reaching the ratio will be due back wages to bring them to the DBA-required wage rate. (Reference DOL's *Field Operations Handbook*, Chapter 15, 15e01, at www.wdol.gov, "Library.")

(3) **Helpers.** "Helpers" under DBA are permitted only if the helper classification is listed on the contract's DBA wage determination. The duties of a helper are clearly defined by area practice within the locality, and are distinct from the duties of any other classification on the wage determination. If the classification of helper is not listed on the wage determination applicable to the work, the contractor must obtain approval from DOL for the use of that classification through the conformance process described in Section 3-1e of this Desk Guide on "Unlisted or Additional Classifications." A conformance request for a helper rate will only be approved by DOL if the contractor submitting the request includes information showing that helpers are a separate and distinct classification from other classifications on the wage determination, and that use of helpers is a prevailing practice in the specific construction industry in the locality.

(4) **Working Foremen.** Foremen or supervisors who regularly spend more than 20% of their time performing the duties of a laborer or mechanic on the site of the work, and who do not meet the exemption criteria under 29 CFR Part 541, are **covered by DBA for the hours spent performing the construction work**, and must be paid at no less than the appropriate wage rate for the classification of the work being performed by the working foreman. The other, non-construction hours spent by a supervisor or foreman directing the work of others, or performing other non-manual work such as timekeeping and reporting, are not covered by DBA.

(5) **Suppliers.** The manufacture and delivery to the work site of supply items such as sand, gravel, lumber, concrete, paint, and other materials, when accomplished by regular suppliers to the public in general, are activities not covered by DBA. However, if the material supplier's laborers and mechanics, in the course of delivering the products, perform more than an incidental amount of construction work at the job site, those laborers and mechanics are subject to DBA wages and benefits for the hours performing such work on the job site.

(6) **Self-Employed Subcontractors.** The statutory language of DBA requires that all laborers and mechanics employed directly on the site of the work be paid no less than the predetermined wages **“regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics.”** (Reference 40 U.S.C. 3142(c)(1).) Under DBA, the term “employed” is not necessarily limited to “employee” and, therefore, may encompass certain independent contractors or workers. Self-employed “independent contractors” (often referred to as “1099 workers”) who perform as laborers or mechanics on a covered project are subject to DBA. The prime contractor must ensure that the “independent contractor” receives no less than the applicable DBA wage rate for the hours worked on the site of the work, and must ensure that such worker is reported on the certified payroll each week. However, an exception may apply to bona fide business owners – defined as any employee who owns at least 20% equity interest in the enterprise and who is actively engaged in its management – may be considered exempt under 29 CFR 541 even though they are themselves performing the work of a laborer or mechanic on the covered project. DBA would, therefore, not apply to these workers. Prime contractors are cautioned to consider use of

this exemption carefully, and to seek advice from the nearest DOL Wage and Hour regional office (listed at <http://www.dol.gov/whd/whdkeyp.htm>) if they have questions. (See subparagraph 1-3b.(3) of this Desk Guide on the requirement to report subcontractors.)

(7) **Owner/Operators of Construction Equipment.** Except as noted below, owner-operators of equipment employed on the site of the work by covered construction contractors or subcontractors must be recognized as DBA-covered laborers or mechanics and must be paid in accordance with the applicable DBA wage determination for the hours worked on the job site.

(a) The exception to this rule is DOL’s administrative policy that DBA and CWHSSA do NOT apply to **bona fide owner-operators of trucks** or other hauling equipment who are employed as independent contractors performing such activity on the site of the work. DOL policy requires contractors and subcontractors to note these individuals on the certified payrolls by name, dates of work, and the notation, “Owner-Operator.” It will not be necessary to record the owner-operator’s hours or wages.

NOTE: Workers employed as truck drivers (NOT owner-operators of trucks or other hauling equipment) driving on the site of the work are subject to DBA and CWHSSA. For further information concerning the application of DBA and CWHSSA to truck drivers, contact the nearest DOL Wage and Hour regional office (<http://www.dol.gov/whd/whdkeyp.htm>).

(b) The exception does NOT apply to owner-operators of equipment other than “hauling.” Therefore, owner-operators of equipment such as bulldozers, backhoes, drilling rigs, welding machines, and similar equipment are covered by DBA provisions. (Reference DOL’s “Significant All Agency Memoranda from the Administrator,” and *Field Operations Handbook*, Chapter 15, Section 15e, www.wdol.gov “Library.”)

(8) **Volunteers.** There are no exceptions to DBA coverage for volunteer labor unless an exception is provided for in a specific DBRA. The Recovery Act, one of the DBRA statutes applied to various projects funded or assisted through DOE, does NOT have any exception from DBA requirements for volunteer labor. Therefore, a Recovery Act-funded project requires that

all workers on the job site receive no less than full DBA wages and fringe benefits.

Questions concerning the use of volunteer labor on a Recovery Act-funded project must be addressed to the contracting officer.

d. Area Practice and Worker Classifications. The DBA wage determination is simply a listing of worker classifications and the basic hourly wage and fringe benefit rates that DOL has determined to be prevailing in the locality for each classification. Those rates must be paid to anyone performing work within those classifications on a covered project in that locality. The classifications are not generally defined by skill level or years of experience. Any worker performing work within the classification is subject to the wages and benefits for that classification regardless of skill or years of experience.

(1) There are no nationwide standard classification definitions under DBA. The proper classification of work performed by laborers and mechanics is that classification used by firms whose wage rates DOL determined to be prevailing in the area. While the duties of many classifications are usually clear (*e.g.*, plumbers, carpenters, painters, *etc.*), in some localities the contractor must determine the “prevailing area practice” in order to properly classify a worker. A survey of the firms performing similar construction work in that locality will provide the prevailing definition for each classification.

(2) If the DBA wage determination notes that the wage survey demonstrated that work in a particular construction classification in a locality is primarily performed by individuals represented by labor organizations, DOL will publish as the DBA minimum requirement the wage and benefit requirements found in the union agreements. The union contractors’ area practice would be used to define worker classifications. If a classification within a locality is not union-prevailing, DOL will publish the average resulting from its survey of rates paid to workers in a classification, and the definition of each classification will be determined by the prevailing area practice of firms performing such work within the survey.

(3) Prime contractors and subcontractors performing work on a covered project are responsible for classifying each worker properly in accordance with the applicable wage

determination. Questions pertaining to classifications within a locality should be addressed to the nearest DOL regional office (listed at www.dol.gov/whd).

e. **Unlisted or Additional Classifications.** DBA wage determinations reflect the wages and benefits determined to be prevailing in a particular locality, based upon survey information provided to the Secretary of Labor. The survey information may not always be complete, and some wage determinations may not list a classification that is needed in the performance of the contract. If a worker classification needed on the project is not listed on the DBA wage determination, the contractor will need to request DOL's approval of an **additional classification and the wage/benefit rate proposed for that classification**. The procedures for obtaining approval of an additional classification are found in DOL regulations 29 CFR 5.5(a)(1)(ii), and in the contract clauses. The process is also known as a "conformance" because the contractor is required to classify the unlisted worker classification "in conformance with" the classifications and rates that are listed on the wage determination.

(1) The contractor's "conformance" request is **submitted in writing** through the contracting officer to DOL. **Subcontractors must submit their requests through the prime contractor** to the contracting officer. Generally, contractors will complete and sign an **SF-1444, "Request for Authorization of Additional Classification and Rate"** (copy included in this Desk Guide and available at www.wdol.gov/library.aspx), providing the contractor's information, contract information, the job title and a full description of duties, any information on "area practice," the contractor's proposed wage and benefit rates, and any other information that will support the request. The contractor is not obligated to use the SF-1444 form, but must provide the same information that is requested in that form. The request for approval must be submitted within 30 days of initial employment of workers in the additional classification.

(2) If the contractor has already employed workers in the proposed additional classification, the contractor's SF-1444 request should include the signature of each worker in that classification, noting whether they concur or disagree with the contractor's proposed rates. If the contractor's request is submitted to DOL through the contracting officer prior to employment of the workers in the classification, it would not include employee signatures.

(3) The completed request is then submitted by the contractor to DOE, as the contracting agency. The contracting officer must sign the request, either concurring or disagreeing with the contractor's proposal. If a worker or the contracting officer disagrees with the contractor's proposed additional classification or rate, a statement must be attached providing and supporting an alternate recommendation. DOE does not have authority to approve or reject a contractor's request for approval of an additional classification. Only DOL has this authority.

(4) **Tips for Obtaining DOL's Approval of Additional Classifications.** DOL cannot approve a contractor's request to add a classification to a DBA wage determination applicable to a specific project unless the contractor submits complete and proper information with the request. Some tips below will help in deciding what information is required.

(a) If a contractor is requesting DOL approval of a **"Helper"** classification, the request should provide sufficient information that the "Helper" classification is the "area practice" for that locality (*i.e.*, that the helper duties are clear and distinct from other classifications and use of the classification is prevailing in the particular locality).

(b) The contractor must ensure that the work to be performed by the additional classification is not part of the work routinely performed by another classification already listed on the wage determination. DOL will not approve a request based upon splitting the duties of a classification that is already listed on the wage determination in order to create a classification at a lower wage rate.

(c) The proposed wage and benefit rates for the proposed additional classification should bear a reasonable relationship to the wage rates listed on the wage determination. The proposed rates for a new skilled classification should be no lower than the wage rate of the lowest skilled classification listed on the wage determination. The contractor or subcontractor must pay the worker in the requested classification no less than the wage rate proposed in its conformance request, pending DOL's approval of the rate.

(d) DOL may request additional information before issuing an approval or denial of the contractor's request. Prompt and complete response to DOL's request will help in quickly resolving any questions. Disagreements on the contractor's proposal from either the worker or DOE, as the contracting agency, will be resolved by DOL.

(5) DOL will respond to the contractor's request for approval of an additional classification by written notification to DOE, as the contracting agency. DOE will then notify the contractor of DOL's decision. If DOL denies the contractor's proposed wage or benefit rate, and directs rates in excess of the initial proposal, the contractor must pay the worker(s) no less than the approved rate retroactive to their initial work on the job site in that classification. The DOE contracting officer, either directly or through the financial assistance recipient, will request written confirmation from the contractor of its full and retroactive compliance with DOL's decision.

(6) Questions concerning the use of unlisted or additional DBA classifications should be referred to the nearest DOL regional office.

Section 3-2 Payment of DBA Wages and Benefits.

a. **Weekly Payrolls.** The DBA statute and regulations require that all laborers and mechanics employed under DBA "will be **paid unconditionally and not less often than once a week**, and without subsequent deduction or rebate on any account . . . except as permitted . . ." by requirements such as taxes or garnishments, or a worker's voluntary agreement. (Reference 29 CFR 5.5(a).)

b. **Recordkeeping and Timecards.** It is the **contractor's responsibility to keep and maintain accurate records of the hours worked** and the classification of work performed by each worker. Errors should be corrected promptly, with prompt payment of any back wages or benefits that may be due the worker as a result of the error. Failure to maintain complete and accurate pay, benefit, and time records may result in an investigation to determine the contractor's status of compliance with the contract labor standards.

NOTE: It is the responsibility of the prime contractor or the financial assistance recipient to ensure that DOL’s DBA poster (WH-1321) and applicable DBA wage determinations are posted on the job site in a prominent and accessible place where they can be seen by the workers. The poster can be downloaded from DOL’s website at www.dol.gov/whd/regs/compliance/posters/davis.htm.

c. Basic Hourly Wage and Benefit Rates.

(1) DBA wage determinations list the various classifications of laborers and mechanics and the basic hourly wage rates that are found to be prevailing in each locality as determined by DOL’s surveys. Many DBA wage determinations also list hourly fringe benefit rates that must be paid to each worker in addition to the basic hourly wage rate. Contractors must ensure that **each worker receives no less than the sum of the basic hourly wage rate and the hourly fringe benefit rate** listed on the applicable wage determination for the worker’s classification.

NOTE: If a DBA wage determination lists the wages and benefits for a particular classification as “\$20.00” and “\$3.00 + 3%,” the contractor must pay at least the basic wage rate of \$20.00, and the hourly benefit rate of \$3.00 plus 3% of the basic hourly wage rate (or \$.60). The percentage is always applied to the basic hourly wage rate. The contractor must pay no less than \$23.60/hour for this worker.

(2) A contractor may discharge its obligation to each worker by paying the total wage and fringe benefit requirement in cash, or by providing a combination of wages paid in cash along with providing bona fide fringe benefits paid by the contractor such as health and life insurance premiums, retirement and savings contributions, vacation and other paid leave plans. (See Section 3-2f of this Desk Guide, “Payment of DBA Fringe Benefits,” for references pertaining to “bona fide fringe benefits.”)

(a) **Example:** The DBA wage determination requires \$18.00/hour basic hourly wage rate, and \$3.00/hour fringe benefits, for a total obligation of \$21.00/hour for the worker.

The contractor may pay the entire \$21.00/hour in cash to the worker. Or, the contractor may pay \$18.00/hour in cash and provide a bona fide health insurance plan that costs the contractor \$3.00/hour in premiums. Or, the contractor may pay \$20.00/hour in cash and provide \$1.00/hour in benefits. Or, the contractor may pay \$16.00/hour in cash, and provide \$5.00/hour in fringe benefits.

(b) Contractors are obligated to record and report the type of payments made each week to meet their DBA requirement for wages and fringe benefits for each worker – payments made in cash to the worker in lieu of providing a fringe benefit plan; payments made to provide plans for each worker; and any combination of cash and benefit plan provided to each worker. (See Section 3-2f of this Desk Guide on payment of DBA fringe benefits, and Chapter 4 on preparing certified payrolls.)

d. Workers Performing at Two or More Classifications. Contractors are required to maintain complete and accurate records of the hours worked by each worker, including identifying the hours worked by a worker at two or more classifications. The worker must be paid no less than the DBA wage rate for each of the hours worked at each classification. Failure to record the hours worked at each classification will result in DOL requiring the contractor to pay all hours worked that week at the highest of the multiple wage rates. (See Section 3-3c of this Desk Guide on the proper computation of overtime compensation for a worker working at multiple wage rates.)

e. Payment of Piecework Rates, Salaries, or Other-Than-Hourly Rates.

(1) Some workers may be hired on the basis of “**piecework rates.**” For example, a drywall hanger may be paid based upon the square feet of sheetrock hung, or a roofer may be paid on the basis of the number of square feet of roofing completed; or painters may be paid on the number of units or square feet painted each week. Other workers may be hired on the basis of an hourly rate plus piecework accomplished each week, or even paid on the basis of a **fixed salary** each week.

(2) Under DBA, the piecework or salaried **worker must still receive no less than the DBA** minimum wages and benefits for each covered hour worked each week. Therefore, the contractor must maintain accurate records of hours worked by each worker each week, and ensure that the worker receives no less than the DBA minimum for each hour worked regardless of pay method. **If the piecework or salary is not sufficient** to cover the DBA requirement for all covered hours that week, the **contractor must provide additional pay for that week** to bring the worker's wages up to the minimum requirement. Each week will stand on its own, and any payments to the worker in excess of the DBA requirement in one week cannot be allocated to cover any underpayments of the DBA requirement in another week.

(3) Example: A laborer on a covered project is subject to \$20.00/hour DBA wage rate. He works a total of 35 hours in Week #1, which would require a DBA minimum of \$700.00 for that week. His pay is computed at a piecework rate that yields a total gross wage of \$1,000.00 for that week. He has, therefore, earned more than the minimum requirement under DBA. In Week #2, the worker works 45 covered hours and his piecework pay is computed at \$800.00. Total weekly pay for Week #2 is divided by total weekly hours, and equals \$17.78/hour – short of the DBA requirement of \$20.00/hour. The contractor must then pay the worker the \$800.00 in piecework pay, plus an additional \$100.00 to ensure that the worker receives the full DBA rate for all hours worked. The piecework wages paid in excess of the DBA minimum for Week #1 cannot offset the underpayment in Week #2. Salaried workers are computed the same way, each week.

NOTE: See Section 3-3c in this Desk Guide for information on computing proper FLSA and CWHSSA overtime compensation for workers employed at other than hourly wage rates.

f. Payment of DBA Fringe Benefits.

(1) DBA wage determinations often list both a basic hourly wage and a fringe benefit rate that must be paid to covered workers. The fringe benefit rate is usually listed as an hourly amount which must be paid for all hours worked each week, including overtime hours.

(2) Fringe benefits include contractor payments for life and health insurance premiums; retirement contributions; vacation, holiday, sick, and other paid leave; and other **bona fide benefit plans**; or equivalent payments to the worker in cash. The criteria used to determine whether a fringe benefit is bona fide under DBA are described in detail at 29 CFR 5.20 through 5.29, and in the DBA statute itself at Section 3141, Definitions. DOL's *Field Operations Handbook*, Chapter 15, Section 15f, also provides details on defining bona fide fringe benefits (<http://www.dol.gov/whd/FOH/index.htm>).

(3) Fringe benefits **do not include** contractor payments required by other federal, state, or local laws such as taxes (*e.g.*, Social Security), workers compensation, or state disability insurance requirements. Fringe benefits also **do not include** payments made to or on behalf of workers for transportation expenses, board and lodging, or required uniforms or tools. These are customarily business expenses of the contractor and not a fringe benefit for the worker. (Reference 29 CFR Part 5, Subpart B, for guidance on providing bona fide fringe benefits under DBA.)

Section 3-3 Overtime Compensation.

a. DBA requires a contractor to pay no less than the minimum wage and fringe benefit listed on the applicable wage determination for each covered hour worked each week. DBA has no overtime (OT) compensation requirements. However, most contractors performing work on these projects are **required by FLSA to pay OT compensation at time and one-half the worker's "regular rate of pay" for the hours worked in excess of 40 each week.**

b. **CWHSSA**, applicable to laborers and mechanics (including guards and watchmen) on covered projects, also requires contractors to pay OT compensation for hours worked in excess of 40 hours each week, counting only those hours worked on CWHSSA-covered contracts during that week. CWHSSA does not have a site of the work limitation on coverage. All hours worked on covered contracts, including hours worked on the contract at off-site locations, are combined for the purpose of determining CWHSSA obligations.

(1) Overtime compensation under CWHSSA is computed on the basis of time and one-half the employee's basic hourly rate of pay, or the employee's "regular rate of pay" (if he works at two or more classifications with different hourly wage rates or is paid on a basis other than hourly). The basic hourly rate used for computing CWHSSA overtime compensation can never be less than the basic hourly wage rate required by the applicable DBA wage determination excluding any fringe benefits listed.

(2) Cash payments made to a DBA/CWHSSA worker for the purpose of meeting DBA fringe benefit requirements are not included in determining the basic hourly rate of pay for overtime purposes. See the example at paragraph c. (5) below.

c. A worker's "**regular rate of pay**" is determined by dividing the worker's total compensation each week by the worker's total number of hours worked that week (including both DBA-covered hours and non-DBA hours worked, *i.e.*, hours worked under FLSA). Additional information on overtime requirements and regular rate of pay can be found at 29 CFR Part 778.

Examples:

(1) If a worker works 45 hours in a week and is paid \$20.00/hour for all hours worked that week, the contractor is obligated to pay an additional \$10.00/hour for the five hours worked in excess of 40 that week.

(2) A second worker works only at **piecework** on a contract. The minimum DBA wage rate is \$15.00/hour. In Week #1, the worker works a total of 45 hours in a week, and earns a total of \$1,000 in piecework. His regular rate of pay will be \$1,000.00 divided by 45 hours, or \$22.22/hour for that week. The piecework more than meets the DBA minimum wage for all hours worked. For overtime requirements, the contractor must also pay the worker an additional \$11.11/hour (one-half of the \$22.22 regular rate) for the five hours over 40 that week.

(3) A third worker works **two different classifications in one week** – 25 hours at \$17.00/hour and 20 hours at \$20.00/hour. His straight-time pay will be 25 times \$17.00 or

\$425.00, plus 20 times \$20.00 or \$400.00, for a total straight-time pay of \$825.00 that week. His overtime compensation will be computed at \$825.00 total, divided by 45 hours, which equals a regular rate of pay of \$18.33/hour. The contractor must pay this worker an additional \$9.16/hour for the five hours over 40 that week.

(4) A fourth worker works on a **salary basis**, a fixed amount for each week regardless of straight-time hours or work production. He is a mechanic and therefore not exempt from the requirements of DBA minimums or FLSA/CWHSSA overtime compensation. The salary is \$1,000/week. The DBA minimum for his classification is \$20.00/hour. In Week #1, this worker works 50 hours. His regular rate of pay is \$20.00/hour ($\$1,000 / 50 \text{ hours} = \$20.00/\text{hour}$). The contractor has met the DBA minimum wage requirement. The contractor is now required to pay an additional \$100.00 (one-half of the regular rate of pay = $\$10.00 \times 10 \text{ OT hours}$) in OT compensation, for a total weekly compensation of \$1,100.00. In Week #2, the worker works 60 hours. His regular rate of pay is now \$16.67/hour ($\$1,000 / 60 \text{ hours} = \$16.67/\text{hour}$). The contractor is therefore required to bring the worker up to the DBA minimum wage requirement of \$20.00/hour by paying an additional \$3.33/hour (DBA rate of \$20.00/hour less \$16.67/hour paid), times 60 hours worked, or \$199.80. The worker's regular rate of pay is now \$20.00/hour, and the contractor must now compute the additional OT compensation due. He owes an additional \$200.00 (one-half the regular rate of \$20.00 equals \$10.00/hour, times 20 OT hours, or \$200.00). Total wages due this worker for this week are the \$1,000.00 salary, plus \$199.80 to bring him to the DBA minimum, plus OT compensation of \$200.00, or a total of \$1,399.80 for this week.

(5) A fifth worker works in a classification that requires \$20.00/hour DBA wage rate and \$3.00/hour DBA fringe benefits. The contractor pays for all of this in cash payments each week (reporting on the WH-347 that he pays \$20.00/\$3.00 in Column (6) of the report). The contractor's obligation for overtime compensation will be time and one-half the basic wage rate on the DBA wage determination (\$20.00), or an additional \$10.00/hour for each of the hours worked in excess of 40 per week. If the worker works 45 hours in Week #1, the contractor is obligated to pay 45 hours times \$20.00/hour DBA basic hourly rate; plus 45 hours times

\$3.00/hour DBA fringe benefits; plus five hours times \$10.00/hour for overtime compensation, for total earnings that week of \$1,085.00.

d. Reference 29 CFR 778 for further guidance on paying OT compensation, and reference DOL's website at www.dol.gov/whd, "Overtime." Questions may also be addressed to DOL's nearest regional office.

Section 3-4 Payroll Deductions. DBA, Copeland Act, and related regulations require contractors and subcontractors to pay all laborers and mechanics ". . . **unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account . . . except as permitted . . .**" (Reference 29 CFR Part 3 concerning allowable payroll deductions.) **Allowable deductions** include withholding for income taxes, worker share of Social Security tax, wage garnishments or payments for judgments legally imposed against the worker by an appropriate authority (*e.g.*, a court), and any legally-permissible deduction voluntarily authorized by the worker such as insurance premiums, retirement contributions, savings contributions, and similar payments. The Copeland Act prohibits contractors from requiring workers to kick-back (*i.e.*, give up) any earnings due them under DBA or CWHSSA. Contractors are cautioned to accurately record any and all deductions from workers' earnings, and to maintain records supporting the authorization of any deductions from a worker's earnings. (See Section 4-2f of this Desk Guide on reporting deductions.)

Chapter 4 DBA Certified Payrolls.

Section 4-1 Wage and Fringe Benefit Reporting Requirements.

a. DBA requires covered contractors to pay their workers not less than DBA-required wages and fringe benefits, in full, **on a weekly basis**.

b. The Copeland Act and DBA regulations require contractors to **provide payroll information** each week to the contracting agency, listing the workers on the project, including work classifications, hours worked, wage rates, benefits, overtime compensation, total wages paid, and

information related to payroll deductions. The basic information required is almost identical to the information already required of contractors by the IRS, DOL, and other federal and state agencies concerned with various taxes, hours worked, wages and benefits paid, and similar contractor requirements.

NOTE: Contractors performing covered work with financial assistance funds through grants, loans, *etc.*, must submit certified payroll information to the financial assistance recipient in accordance with the terms of the applicable contract.

c. In addition, the Copeland Act requires DBA-covered contractors to provide a signed **“Statement of Compliance”** (or **“certified payroll”**) certifying that the weekly payroll information is correct and complete and that each laborer and mechanic has been paid not less than the DBA prevailing wage and benefit rate for the work performed that week.

d. The **due date** for each certified payroll to be submitted to DOE, as the contracting agency, or to the financial assistance recipient in accordance with the contract, is **no later than one week after each weekly pay date**. (For information regarding penalties for failure to submit certified payrolls or for falsification of payroll information, see Section 4-4b of this Desk Guide.)

e. The **prime contractor is responsible for the timely submission to DOE of certified payrolls for all subcontractors**. The prime contractor is obligated to notify all subcontractors of the labor provisions of the contract and to ensure that each subcontractor submits timely, accurate and complete certified payrolls.

NOTE: Financial assistance recipients must provide DOE certified payrolls consistent with the terms of the applicable contract.

f. DOL’s Form WH-347, “Payroll,” and instructions for completing it, can be found in a fillable PDF format at www.dol.gov/whd/forms/index.htm. The second page is used to report information about payment of fringe benefits and contains the “Statement of Compliance.”

g. Form WH-347 is recommended for contractor use. Contractors may, however, provide another payroll reporting format as long as the payroll information is identical to that required by WH-347, and the “Statement of Compliance” contains the same certification language. Each separate page and attachment to a report must include the contractor’s name, the project number, the week-ending date for the report, and the sequential payroll number.

Section 4-2 Completing Certified Payroll Form WH-347.

a. Name of Contractor/Subcontractor and Address. Check the box noting the category (contractor or subcontractor) of the reporting contractor and insert the contractor’s complete name and address.

b. Payroll No. Each payroll report must be numbered, beginning with “#1” as the first payroll submitted by the reporting contractor for the first week in which it employs covered workers on the site.

c. For Week Ending. Each contractor must establish a fixed workweek period of seven consecutive days (*e.g.*, Monday through Sunday; Sunday through Saturday). The hours worked by each laborer and mechanic during that workweek must be reported on each weekly payroll, along with wages and benefits paid for that week.

d. Project and Location. A brief description of the project name and the location where the work is performed (include the county or counties).

e. Project or Contract No. Prime contractors will report the number of the contract/project awarded to them; subcontractors may use the same number if they have it, or use the number of their subcontract with the named prime contractor.

f. Worker Information.

Column (1) **Worker name and** worker identifying **number** (or last four digits of worker's Social Security Number – do **NOT** report the worker's full SSN).

NOTE: Contractors are required by DBA, FLSA, and many other statutes to maintain accurate records of worker addresses and full SSNs. The WH-347 certified payroll reports that are required under DBA/Copeland Act do not require reporting worker addresses and full SSNs. Contractors must provide this information in a separate report if requested to do so during a compliance review.

Column (2) **Number of withholding exemptions.** This information may be reported for the contractor's convenience in computing withholding taxes, or the column may be left blank.

Column (3) **Worker classification(s).** List the classification of work actually performed by each laborer and mechanic. If a worker works at more than one classification within a single week, show each classification separately for that worker, along with the hours worked and hourly rate of pay for each classification.

NOTE: Workers properly documented and employed as **apprentices** or **trainees** must be reported as such with the classification in which they work (example: "Plumber/Apprentice"), and supporting documentation evidencing the worker's enrollment in an approved program must be attached to the first certified payroll reporting their hours worked on the project. (See Section 3-1 on Apprentices and Trainees.)

Column (4) **Workweek.**

(a) At the head of the column each contractor must note the **days of the week** that constitute the established seven-day **workweek** (*e.g.*, "S-M-T-W-T-F-S" or "T-W-T-F-S-S-M," *etc.*). In the box below the day of the week, note the **date** for each day reported (*e.g.*, 25th, 26th, 27th, *etc.*). A workweek is a fixed and regularly recurring period of seven consecutive 24-hour periods. It need not coincide with the calendar week. (Reference 29 CFR 778.105.)

(b) In the boxes below the dates, report **only** the hours worked each day **on this covered project**, noting in the boxes marked “S” the straight-time hours worked, and in the boxes marked “O” the overtime hours worked. Do not include hours worked on any other project.

(c) Overtime hours reported in Column 4 (and totaled in Column 5) on the WH-347 are those hours worked on the covered project in excess of 40 hours in any workweek.

NOTE: Overtime Compensation. Reference Section 3-3 of this Desk Guide for information on meeting the requirements for overtime compensation under FLSA and CWHSSA.

Column (5) **Total hours** worked for the week **on this project**.

Column (6) **Rate of Pay**. Show the straight-time rate of pay on the “S” line in this column, and show the overtime rate of pay on the “O” line in this column. If the contractor pays cash in lieu of providing a fringe benefit plan to meet the benefit requirements on the DBA wage determination, show both the regular wage rate and the fringe benefit rate paid in cash in Column 6 “S” box, in the following manner:

Example for reporting workers earning hourly wages and cash in lieu of fringe benefits: A worker earns the DBA basic hourly wage rate of \$18.00/hour, and \$3.00/hour for fringe benefits paid in cash each week. The contractor should report the rate of pay in Column (6) “S” (straight-time rate), \$21.00. If the worker worked overtime hours, the overtime rate of pay reported in Column (6) “O” will be no less than time and one-half the basic hourly wage rate of \$18.00, or \$27.00/hour, plus \$3.00/hour for the cash in lieu of fringe benefit requirement, for a total overtime rate of pay at \$30.00/hour.

Example for reporting workers employed at piecework rates: For a week in which an employer paid piecework instead of an hourly rate of pay, the employer must show on a signed attachment to the WH-347, or equivalent form, the computation for the worker’s basic hourly wage rate and overtime rate of pay.

Example A: In a week in which a worker worked 40 hours and was paid \$550.00 in piecework, the worker's hourly wage rate is \$550.00 divided by 40 hours, or \$13.75/hour. If the DBA minimum for the classification is \$18.00/hour plus \$3.00/hour in fringe benefits, the employer must pay an additional \$7.25/hour to the worker to bring him to the total DBA minimum requirement of \$21.00/hour, and then report in Column (6) of the WH-347 "\$21.00" as rate of pay. The rate of pay reported in Column (6) for overtime ("O" hours) will be the same as noted in the example above, "\$30.00/hour" (time and one-half the straight-time rate plus cash in lieu of fringe benefits).

Example B: In a week in which a worker worked 40 hours and was paid \$1,000.00 in piecework, the worker's hourly wage rate is \$1,000.00 divided by 40 hours, or \$25.00/hour. If the DBA minimum wage rate for the classification is \$18.00/hour plus \$3.00 in fringe benefits, the employer has met and exceeded the DBA requirement, and must report in Column (6) of the WH-347 "\$25.00" as the worker's straight-time rate of pay. The rate of pay reported in Column (6) for overtime ("O" hours) will be "\$37.50/hour" (time and one-half the worker's regular rate of pay).

(Reference Section 3-2 of this Desk Guide on piecework pay under DBA.)

Column (7) **Gross amount earned.** Each box has a diagonal line permitting the contractor to report each worker's total gross wages paid **specifically for work on the project** reported by this particular payroll (noted in the **upper portion of the box**), and total gross wages earned for the entire week (noted in the **lower portion of the box**). The total gross wages reported in the lower portion of the box would include not only the project work, but also any and all work performed by the worker on other DBA projects and work performed on non-DBA projects.

NOTE: For workers **working at more than one classification** on the project, the contractor must report for each worker the hours worked, total hours, rate of pay for each classification, and total gross wages (in columns (3), (4), (5), (6), and (7)).

Column (8) **Deductions**. Five columns are provided for reporting all deductions from each worker's gross wages, and a sixth column for the total of all deductions. Each deduction must be identified. If more columns are necessary, the contractor may provide this information on a separate, attached sheet. The total of the deductions on the separate attachment can be reported in the column headed "Other." The total amount of all deductions is reported in the last (6th) deduction column, "Total Deductions." When reporting a worker who has worked on a covered project as well as on non-project work in the same week, the entry in Column (8)'s "Total Deductions" should reflect the amount of deductions taken from the worker's total wages for that week.

NOTE: Deductions must be identified (*e.g.*, "state income tax," "loan repayment," "purchase of equipment"). Any deduction other than those required by law (such as taxes) or required by order of an appropriate authority (such as wage garnishments) must be voluntary and authorized in writing by the worker or authorized by a collective bargaining agreement. For voluntary deductions, a short note describing the deduction and signed by the worker should be attached to the payroll report on which the deduction first appears.

Column (9) **Net wages paid for week**. Net wages paid is the total gross amount earned for all of the work performed that week (reported in the lower section of Column (7)) less total deductions (reported in the last section of Column (8)).

Section 4-3 Reporting Fringe Benefit Payments on Form WH-347.

a. Contractors are obligated to report payments made to comply with the DBA fringe benefit requirement and the manner in which these payments were made – either cash paid in lieu of providing a fringe benefit plan and/or payments made to a plan that provides benefits to the worker. Section (4) on the second page of the WH-347 serves the purpose of reporting the

manner of payment of DBA benefits. Contractors should attach to a certified payroll report any additional information concerning payment of fringe benefits.

b. If the contractor pays all workers the required DBA **fringe benefits in cash, in lieu of providing a benefit plan**, the contractor must report the payment on the first page of the WH-347, in Column (6) “Rate of Pay” and in Column (7) “Gross Amount Earned.” The contractor must also check **Box (4)(b)** on the second page of the WH-347 indicating payment of cash in lieu of providing benefits.

c. If a contractor **pays the required DBA fringe benefit rate into a bona fide fringe benefit plan** for all workers, the contractor should check the box in **Box (4)(a)** on the second page of the WH-347. It is not necessary to show the amount paid into these plans on the first page of the WH-347 in Column (6). It will be necessary, of course, to maintain supporting documents for the benefit plan(s), and documents that evidence the contractor’s contributions for those plans. A compliance review or investigation will include a review of these documents.

d. If a contractor **pays some of the workers cash in lieu** of providing a benefit plan, **and provides other workers benefit plans** to meet the DBA fringe benefit requirement, or pays a portion of the fringe benefit requirement in cash and a portion of the requirement into a bona fide benefit plan, the contractor should check whichever box in Section (4) represents the most-used payment method, and note in Section 4(c) the exceptions and the details of the payment method.

e. In reporting fringe benefits on the WH-347 or equivalent form, it is important that the contractor clearly show the method used to comply with DBA. Information that is confusing, incomplete, or inaccurate will generate further inquiries during payroll reviews and may result in a full investigation to ensure contractor compliance.

Section 4-4 Statement of Compliance (or Certification of Payroll).

a. The required Statement of Compliance is located on the second page of the WH-347. If a contractor uses any payroll format other than Form WH-347, the same Statement of Compliance

must be signed and submitted with each weekly payroll. The **Statement of Compliance must be signed by a principal of the firm** (owner or an officer such as president, treasurer, or payroll administrator). The signature must always be that of a person who has authority to direct the payment of wages and benefits to the workers.

NOTE: Proper use of electronic signatures on certified payrolls and related compliance statements is permitted, and carries the same legal effect as handwritten signatures.

NOTE: In completing DOL's fillable pdf form, note that the Statement's "payroll period" dates require entries to be made numerically (example: instead of entering "14 day of June, 2010," enter "14 day of **06**, 2010."

b. The **willful falsification of a payroll report or a Statement of Compliance** may subject the contractor to civil and/or criminal prosecution and may also be a cause for debarment. Inducing any person to "give up any part of the compensation to which he/she is entitled under" DBA and its related Acts (known as "kickbacks") may also subject a contractor to prosecution and/or debarment.

Section 4-5 "No Work" Payrolls. Certified payrolls must be submitted each week to the designated agency for the project. If a contractor or subcontractor on a project performs no covered work in a specific week, there is no need to submit a certified payroll. If the contractor does not expect to be on the job site for several weeks, it is recommended that the contractor submit a statement to DOE, as the contracting agency, or to the financial assistance recipient, notifying it that the contractor will not be working on the project for an extended period of time, and providing an approximate date of return. For the next week in which work is performed on site by that contractor's laborers or mechanics, the contractor must submit a certified payroll numbered sequentially following the last certified payroll submitted. This will help to avoid confusion about interruptions in receipt of weekly payroll reports.

Section 4-6 Retaining Payroll Records. Every contractor and subcontractor on covered projects must keep a complete set of pay records for **at least three years** after the project is

completed. This includes basic payroll information, time cards, cancelled checks or receipts for cash payments for wages or benefits, apprenticeship documentation, evidence of payments to fringe benefit plans, and information on taxes and other payroll deductions.

Chapter 5 Payroll Reviews and Corrections.

Section 5-1 Compliance Reviews.

a. **General. Federal contracting agencies, including DOE,** have primary responsibility for the day-to-day enforcement of contract labor standards on a covered construction project. Generally, the contracting agency will be responsible for ensuring that contractors and subcontractors comply with the labor standards requirements. Prime contractors and first-tier financial assistance recipients must also ensure compliance by subcontractors. Compliance reviews include visits to the job site, worker interviews, review of time and pay records and related information, and discussions with the contractors and subcontractors. In addition, DOL may conduct its own investigation to determine compliance under DBA, FLSA, CWHSSA, and other labor laws applicable to a contractor. (See Section 5-3 concerning DOL's enforcement sanctions under these contract labor standards.)

b. **Worker Interviews.** The compliance reviewer will visit the job site and interview workers concerning their wages, hours, benefits, classifications, payroll deductions, and other related subjects. Contractors are required by law to provide access to their workers for the purpose of interviewing at the job site by either the designated compliance reviewer or a DOL investigator. Every effort will be made to ensure that the interviews cause as little disruption as possible in performance of the work on the job site. It is DOL's policy to protect the identity of workers and other sources during a compliance review or labor investigation. Therefore, such information will not be disclosed without prior consent of the source. On occasion, workers (including former workers) will be contacted off-site, by telephone, or at their place of residence. Contractor and subcontractor cooperation with this task is essential and any questions pertaining to the process should be addressed to DOE or the DOL investigator.

c. **Project Payroll Reviews.** The compliance reviewer will collect certified payroll reports submitted to DOE via the prime contractor (or recipient of loan, grant, loan guarantee, *etc.*), along with documents supporting the use of apprentices and trainees, documents supporting payroll deductions, written interviews completed at the job site and elsewhere, the applicable DBA wage determination, and other pertinent information such as the daily construction or contract progress reports. These documents will be reviewed to determine the contractor's status of compliance. The contracting officer will notify the prime contractor and subcontractor(s) of any discrepancies found during the review.

NOTE: As noted before, DOE, as the contracting agency, and financial assistance recipients may withhold accrued payments or advances as may be necessary to cover any underpayment of wages, fringe benefits, or overtime compensation due as a result of DBA or CWHSSA violations. For this reason, prime contractors and financial assistance recipients should review each contractor's payroll report for compliance issues **prior to submitting the report** to the contracting officer, consistent with the terms of the applicable contract. Systematic and careful review of contractor reports may detect any errors or violations early in the project, and thus avoid costly compliance reviews and underpayments of wages and/or fringe benefits due the workers.

d. **Common DBA/CWHSSA Payroll Errors and Corrections.**

(1) **Incomplete or inadequate payroll information.** If the contractor does not use the optional DOL Form WH-347 to report weekly payrolls, it must still provide all the information requested by that form.

(2) **Missing addresses and identifying worker number.** The contractor must report an identification number for each worker (or the last four digits of the worker's Social Security number if there is no other worker identification system in use). **Do NOT include full Social Security numbers or home addresses** on the weekly certified payrolls. Contractors must maintain such information in its basic pay and employment records and are obligated to provide this information, if requested, to the compliance reviewer or the DOL investigator.

(3) **Classifications.** If a contractor reports worker classifications that are not listed on the DBA wage determination, the contractor will be asked to either reclassify the worker in compliance with the classifications listed on the wage determination, or submit with the certified payroll report a copy of the SF-1444 “Request for Approval of Additional Classifications” that was submitted to DOL for approval. DOL’s response will be sent to DOE, as the contracting agency. DOE will notify the prime contractor of DOL’s response. If DOL’s decision denies the contractor’s proposed wage or benefit rate and directs an increase in either rate, the contractor must comply with the decision retroactive to the start of employment of the missing classification. If DOL denies the request for conformance of a proposed classification, noting that a classification already listed on the applicable wage determination is applicable, the contractor must comply with the decision retroactive to the start of employment of that classification. The contractor must submit a certified payroll reporting any retroactive payment of wages/benefits to the worker(s) as a result of DOL’s decision.

(4) **Apprentices and Trainees.** The most typical violation involving the use of apprentices and trainees is the **contractor’s failure to submit documentation** evidencing the worker’s enrollment in an approved program. The second most typical violation involving these workers is the **contractor’s failure to comply with the apprenticeship program’s ratio of apprentices to journeymen.**

(5) **Overtime Compensation.** Payroll reports that indicate a worker worked in excess of 40 hours per week MUST include information regarding the contractor’s compliance with the requirement to pay overtime compensation at not less than time and one-half the regular rate of pay. If the contractor failed to pay proper overtime compensation under CWHSSA, the contractor may also be liable to the United States for liquidated damages of \$10.00 per day per violation. If CWHSSA is not applicable to the worker, FLSA overtime violations may be referred to DOL for further investigation.

(6) **Fringe Benefits.** If the contractor or subcontractor fails to report payment of DBA fringe benefits that are required by the wage determination, the contractor will be asked to

confirm compliance with the requirement to pay no less than the total wage and fringe benefit rates per hour, and to submit a corrected payroll report.

(7) **Signature.** If the signature is missing or does not have the level of authority required by the Act, the payroll report will be returned for correction.

Section 5-2 Violations and Restitution of Underpayment of Wages.

a. If DOE's compliance reviewer **discovers a contractor's failure to pay the appropriate DBA wages and fringe benefits**, the contractor will be notified immediately and the **contractor will be required to pay full restitution to the workers**. Typically, the contractor will be allowed 30 days to correct the underpayments. The prime contractor is always responsible to the DOE contracting officer to ensure that subcontractors on the project pay the back wages in full and promptly.

b. **Simple Reporting Errors and Corrections.** Errors resulting from calculation errors, failure to attach proper documentation, and failure to report proper classifications may be resolved quickly and completely with informal notification to the prime contractor and subcontractor from the compliance reviewer, and prompt corrective response from the contractor. Contractors and subcontractors are responsible for knowing the contract's labor standards requirements and they must cooperate completely and promptly with all requests for compliance.

c. The **contractor found to be in violation and liable for unpaid wages or benefits must also submit a corrected payroll** report to the contracting officer showing the computation of back wages and evidence of full payment to the workers.

d. **Unlocated Workers Who Are Due Back Wages.** After an investigation discloses a contractor's failure to pay proper DBA wages or benefits, the contractor must make every reasonable effort to locate former workers and to pay back wages. If the contractor fails to locate any of the former workers, the contractor may be asked to provide to the DOE contracting officer evidence of its attempts to locate the workers (*e.g.*, returned mailings, *etc.*), and a list of the

missing workers including name, last known address, Social Security number, dates of employment, and gross amount of underpayment due each of the workers. The contracting officer may withhold contract funds in the total amount of underpayment due the missing workers (or the contractor may be asked to provide payment by check to DOE as the contracting agency) for the purpose of asking the Comptroller General's office for assistance in locating the missing workers. The Act specifically authorizes the Comptroller General to disburse funds withheld for wages found to be due to laborers and mechanics under DBA. (Reference 40 U.S.C. Sec. 3144.)

Section 5-3 Labor Standards Disputes and Sanctions for Violations of DBA Requirements.

a. **Labor Standards Disputes.** It is the responsibility of the contractor and subcontractor to be knowledgeable about their obligations under the several contract labor standards. It is DOE's responsibility as the contracting agency to enforce the provisions of DBA and CWHSSA. When the compliance reviewer notes violations such as failure to record hours worked, misclassification of workers, inappropriate use of apprentices and trainees, failure to pay benefits or overtime compensation, or unallowable deduction from wages, DOE will notify the prime contractor of the violations (and the subcontractor, if the violations are the result of the subcontractor's pay practices). If the contractor disagrees with the findings of the compliance reviewer, the prime contractor and/or subcontractor, or any other interested party, may ask DOL's Wage and Hour Administrator for a review and reconsideration of the issue. The Administrator's decision may then be appealed to DOL's Administrative Review Board. The requests must be timely and in writing. (Reference 29 CFR Part 1 for the procedures.)

b. **Withholding.** The contracting officer has the responsibility to withhold from payments due to the prime contractor any amounts believed to be due and unpaid to workers because of DBA violations. An authorized representative of DOL may also direct DOE to withhold contract payments due to violations of DBA. If funds remaining due to the contractor on the contract under which DBA violations occurred are insufficient, DOE can withhold funds from other contracts subject to DBA or CWHSSA that are held by the same

prime contractor. Prime contractors and subcontractors will be notified in writing of any action to withhold payments due to labor violations.

c. **Debarment.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of DBA will be debarred – ineligible to participate in any DBA/DBRA contracts – for up to three years. Debarment applies to the contractor or subcontractor and any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the DOE contracting officer or may be initiated by DOL. Proceedings are described in 29 CFR 5.12. Debarment under DBA and violations of contract clauses including DBA, CWHSSA, requirements for certified payroll reports, and other contract labor standards, can be the basis for DOE to terminate the contract.

d. **Falsification of Certified Payroll Reports.** Contractors or subcontractors found to have willfully falsified payroll reports (Statements of Compliance), including payrolls reporting correction of earlier violations, may be subject to civil or criminal prosecution. Penalties up to \$1,000 and/or one year in prison for each false statement may be imposed. (Reference 18 U.S.C. 1001 and 31 U.S.C. 231.).

A DESK GUIDE TO THE DAVIS-BACON ACT

WEB LINKS FOR ADDITIONAL DAVIS-BACON ACT INFORMATION

- **Frequently Asked Questions:**

- http://www.gc.energy.gov/GCHotlineFAQ%20.htm#Davis_Bacon
- http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1 (EECBG)
- http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=2 (WAP)
- http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=3 (SEP)

- **Davis-Bacon Act Clauses:**

- Weatherization Assistance Program:
http://www1.eere.energy.gov/wip/pdfs/dba_clauses_weatherization.pdf
- Other Recovery Act Programs:
http://www1.eere.energy.gov/wip/pdfs/dba_clauses_non_wap.pdf

- **U. S. Department of Labor, Wage and Hour Division:**

- <http://www.dol.gov/whd/programs/dbra/wh1321.htm> - DBA Poster
- <http://www.dol.gov/whd/whdkeyp.htm> - DOL WHD Key Personnel and Regional Office Addresses
- <http://www.dol.gov/whd/recovery/pwrb/toc.htm> - DBA Area Practice Surveys
- <http://www.dol.gov/whd/FOH/index.htm> - DBA policies, including definitions of bona fide benefits
- <http://www.wdol.gov> – Website containing DBA general wage determinations, policy statements (“All Agency Memoranda”), and links to federal agency labor advisors, federal labor regulations, and forms