



## **GUIDANCE FOR SRF RECIPIENTS DAVIS BACON AND RELATED ACTS PROGRAM NEW YORK CLEAN and DRINKING WATER STATE REVOLVING FUNDS**

In order to receive financial assistance through either the Clean Water or the Drinking Water State Revolving Funds (SRFs), you will need to meet various New York State and federal requirements. In support of your SRF-financed project, you are required to engage in procurement and construction oversight practices to ensure that construction contractors and subcontractors are complying with provisions of the Davis Bacon Related Acts<sup>1</sup> (DBRA) including payment of the higher of the state or federal wages and supplemental benefits. The DBRA requirements apply to any construction contract in excess of \$2,000 that is still under construction after October 30, 2009. For construction contracts executed prior to October 30, 2009, it may be necessary to issue a change order to the contractor to incorporate the provisions of the Acts.

A summary of the Davis Bacon Program requirements is provided below. More detailed descriptions can be found on our website at [www.nysefc.org](http://www.nysefc.org) or by calling (518) 402-7396 or (800) 882-9721. The Environmental Facilities Corporation's (EFC) Program Management staff is prepared to assist you in identifying your obligations under this Program throughout the process of obtaining SRF financial assistance.

**Proper completion of these steps is critical to successful SRF financing of your project. Failure to comply with the Program requirements may delay receipt of funds for your project and could jeopardize SRF financing for your project.**

### **I. Program Requirements**

The following activities must be implemented by each SRF applicant in order to establish an acceptable Davis Bacon Program. EFC is available to assist in all phases of this effort.

#### **Activities to be Completed Prior to Procurement of Contracts**

##### **A. BID PACKAGE AND EFC APPROVAL OF PLANS AND SPECIFICATIONS (Typical Bid Package Materials are available on the EFC website at [www.nysefc.org](http://www.nysefc.org))**

You are required to inform prospective bidders for construction contracts of their DBRA obligations as part of the bid process. Each potential bidder must be made aware of the current prevailing federal and state wage rates and other DBRA requirements and their obligations in maintaining compliance throughout the construction duration.

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<sup>1</sup> Davis Bacon Related Acts Consist of the Following Acts:  
Copeland Act 40 U.S.C. 3145  
Reorganization Plan No. 14  
Department of Labor 29 CFR Parts 1, 3, and 5  
Contract Work Hours and Safety Standards Act

EFC has prepared a Pre-Bid/Pre-Selection Package that is generally suitable for inclusion in all bid packages. Sample contractual language is available on our website [www.nysefc.org](http://www.nysefc.org) under Resource Library. The items described below **must** be included in all construction contract bid documents.

1. Contractual language entitled, "Davis Bacon (DB) Prevailing Wage Requirements for SRF Recipients" in its entirety.
2. The current version of the federal wage rates as of the date of bid advertisement. Ensure that wage rates are included for each applicable labor category use in the project. The rates are available on the Department of Labor website. <http://www.wdol.gov/>
  - i. Under Davis Bacon Act in the top center of the page, select, "Selecting DBA WDs"
  - ii. Select the State, County and Construction Type. Ensure this matches up with where the project is located, not the recipient offices (if they differ). The WD number will be automatically filled out. Then select, search.
  - iii. In blue text, just below the wage determination box is a selector for "Printer Friendly Version". Select this and include in the bid documents.
3. The current version of the state wage rates as of the date of bid advertisement. The higher of the state or federal wages must be paid to contractors and sub-contractors, so both must be provided in the bid documents.
4. Sample federal payroll form WH-347
5. Sample labor standards interview form SF1445

EFC will review your plans and specifications to confirm that each of the items have been included. If any of these items are not included, EFC will not approve your bid documents, which can delay construction start and could require addenda or change orders to incorporate all requirements.

### **Activities to be Completed Prior to Award/Execution of Construction Contracts**

#### **B. CURRENT FEDERAL WAGE RATES – 10 DAY RULE AND 90 DAY RULE**

Prior to the award of a construction contract, each recipient is required to check the federal wage website weekly to ensure that the wage determination presented in the bid package is the most current. If the federal wages change more than 10 days in advance of the bid opening, an amendment must be issued containing the new wage rates.

If the construction contracts are not executed within 90 days of the bid opening, the federal wage website must be checked prior to contract execution and the most recent wage determination must be included as a change order or amendment to the contract.

The federal wages can be checked to ensure the most recent wages are being used by following the same procedure outlined in step A.2 above. Once a wage determination is obtained, there is a section at the top of the webpage that identifies the modification number and publication date. If the publication date has changed since the bid documents were issued, then the updated version must be incorporated.

#### **C. DEBARRED OR SUSPENDED CONTRACTORS**

Ensure that the contractor and subcontractors bidding on the work are not included on the debarred or suspended contractors list that is located within the state wage rates and is also available on the US Department of Labor website. <http://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm>

## Activities to be Completed After Execution of any Contracts

### D. WAGE RATE COMPLIANCE VERIFICATION

1. Wage Interviews
  - a. Conduct wage interviews based on a reasonable percentage of contractor and subcontractor employees using Standard Form 1445. The purpose of the interviews is to verify that the contractor's employees are being paid the appropriate wages and benefits.
  - b. Recipients are to conduct interviews on a periodic basis, but no less than within 2 weeks of each contractors' (or subcontractors') submission of initial payroll AND within 2 weeks of contract completion. Develop a written schedule for conducting wage interviews and provide a copy to the contractor.
  - c. All interviews are to be conducted confidentially.
2. Confirm payroll form WH-347 or equal is being used. If an "equal" is being used, ensure that the contractor certification matches the statement of compliance found on the reverse side of the federal payroll form. Contact EFC if you are unsure if a payroll form can be considered an equal to the federal form.
3. Confirm higher of state or federal wages is being paid by comparing the wages and benefits for each trade on the job.
4. A sampling of payroll forms must be reviewed by the loan recipient to ensure accuracy in reporting.
5. Check to ensure the apprentice and trainee ratios are followed.
6. Ensure apprentices onsite are part of a registered state or federally recognized program.
7. Confirm that employees with contractor and subcontractor are being paid weekly wages with benefits. Also confirm that overtime is not less than one and one-half times the basic rate of pay for hours in excess for forty hours on contracts in excess of \$100,000.
8. Ensure all subcontractors receive wage determinations and require equal employment opportunities.
9. Confirm that the Davis Bacon Wage Rate poster and federal and state wages are posted in a visible area at the construction site
10. **Waste, Fraud and Abuse** - Report potential violations to the EPA Davis Bacon Contact and DOL Wages and Hours District Office found on their website. <http://www.dol.gov/esa/contacts/whd/america2.htm>
11. Any violations in payroll reporting or unpaid wages can be subject to a daily monetary penalty.
12. Maintain all required records, such as certified payrolls on the WH-347 form or equal, interview forms on SF1445 and related information onsite in an organized manner readily available for review by EFC or their authorized representatives on regulatory inspections.

Note that EFC performs interim and final construction inspections. The EFC inspector will verify that the steps above are being followed and will also check to ensure the proper signs and wage rates are posted in a visible area.

## Activities to be Completed After Final Completion of any Contracts

### E. RECORDS RETENTION

You must maintain payrolls and basic records for a period of three years after the contract has been completed for all laborers and mechanics working on the site.

The records and documents to perform these reviews and audits must remain accessible to representatives of EFC, as required.



## II. Suggestions/Tips

Below are suggested actions that can help you with this Program:

1. Submit Bid Plans and Specifications as soon as they are available for EFC review to ensure compliance with the proper language.
2. Ensure that all bid advertisements contain the EFC Pre-Bid/Pre-Selection Packet.
3. Keep payrolls and interviews in one place and identify which payrolls have been spot checked so that an auditor can review the documents more easily.
4. Conduct the payroll interviews in a confidential manner.
5. Keep any pertinent photos of signs available with project information once project is complete.
6. Interview each new subcontractor's employees when they first arrive on the site at the beginning of their work.
7. Report any waste, fraud and abuse as soon as you become aware of it.
8. Keep pertinent payroll files onsite for 3 years after project completion.

For additional information or assistance please contact EFC at (800) 882-9721 or (518) 402-7396. The Davis Bacon Program information is also available on the EFC website at [www.nysefc.org](http://www.nysefc.org) as outlined above.