1. If a Davis-Bacon project is designated as a separate project, but the school has another project that is in the same building or campus (whether the work overlaps or not), would the non-Davis-Bacon project require Davis-Bacon wage rates? Please review a variety of similar scenarios you may have encountered.

*It depends. The US Department of Labor (DOL), Wage and Hour Division (WHD) has long recognized that a project consists of all construction necessary to complete the project regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. See All Agency Memorandum 207, page 5. If these two “projects” are closely related, in purpose, time and place, regardless of how they are designated or whether the work is awarded under separate contracts, and one of the projects receives ESSER funds, then DBRA prevailing wage requirements generally would apply to all of the work for both. With few exceptions, when a project receives any funding that requires payment of Davis-Bacon prevailing wages, construction work at the site of the work for the entire project is generally subject to Davis-Bacon prevailing wage requirements, regardless of how the funding recipient chooses to allocate that funding among the different activities relating to that project. However, if the projects are indeed separate, unrelated projects, then the application of ESSER funding to one project will not affect the other project.*

*Please reach out to WHD on a case-by-case basis to make a final determination should questions arise.*

1. If I am writing a project manual for a project to be bid and I attach Davis-Bacon wage rates for bidder information, only to find that the rates have been updated during the bid phases (or immediately after bids received), do I have to update my wage rates, or do the wage rates posted apply? Please review a variety of similar scenarios you may have encountered where they need to be changed and where they may stay the same as originally posted.

*For contracts entered into under competitive sealed bidding procedures, contracting agencies must update their invitation for bids if an updated wage determination is issued up to 10 days prior to bid opening date. Modifications issued less than 10 days before bid opening date need not be incorporated into the invitation for bids if the agency finds that there is not reasonable time before bid opening date to notify bidders of the change. After bid opening date, the wage determination need not be updated even if a new modification is issued, so long as the contract is awarded within 90 days. If the contract is not awarded within 90 days, however, the wage determination modification must be updated up to the time of contract award, unless the contracting agency has asked for and obtained an extension from the Department of Labor on the grounds that updating the wage determination would cause injustice or undue hardship.*

*For other types of projects, wage determinations generally must be updated up to the date of contract award. (Note that specific requirements apply for projects assisted under the National Housing Act and for projects that receive housing assistance payments under section 8 of the U.S. Housing Act of 1937).*

1. If a contract has been awarded and a contractor starts a project in the field only to find wage rates have changed during the middle of construction, are updates required which would possibly change the contract total?

*That is generally not required, assuming that the contract contained the appropriate wage determinations at the time it was awarded. However, if the contract substantially changes after contract award, then the wage determination will have to be updated. For example, if the contract is modified to include additional construction or change the construction that was required in the original contract, a new wage determination would have to be incorporated. Similarly, if the contracting agency exercises a contract option, requiring the contractor to perform construction work over an extended time period, a new wage determination would have to be incorporated.*

*In addition, the Administrator may require the application of a wage determination after contract award or after the beginning of construction if:*

1. *the contracting/assisting Federal agency has failed to incorporate the applicable wage determination in a contract required to contain prevailing wage rates determined in accordance with the*[*Davis-Bacon Act*](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra)*, or has used a wage determination which by its terms or the provisions of Regulations,*[*29 CFR Part 1*](https://www.ecfr.gov/current/title-29/subtitle-A/part-1)*, clearly does not apply to the contract, or*
2. *the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency’s*[*SF-308*](https://www.dol.gov/agencies/whd/government-contracts/construction/forms/sf-308)*request for a project wage determination.*

*Under either of these two circumstances, where the contract did not contain the correct wage determinations at the time of award, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, provided that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.*

*In addition, upon his or her own initiative or at the request of an agency, the Administrator may correct any wage determination if he or she finds that the determination contains an inadvertent clerical error. For example, a wage determination contains a wage rate where there is a transposition of numbers, such as a fringe benefit of $2.53 appears in the wage determination as $2.35.*

1. Can you reference the reporting requirements and walk through them step-by-step?
   1. Are schools subject to turn in reports on a weekly basis or may they be reported less frequently? Bi-monthly? Monthly? Only when payments are distributed?

*Under Davis-Bacon labor standards, covered workers must actually be paid weekly and certified payrolls must be submitted weekly. As required under 29 CFR 3.4, each weekly statement required must be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a federal or state agency in charge at the site of the work. If there is no representative of a federal or state agency at the site of the work, the statement should be mailed by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a federal or state agency contracting for or financing the work.*

*Please consult with the individual school district awarding the contract regarding additional reporting the district may require.*

* 1. Are there requirements to turn in information beyond the contractor sending to the schools? Does the school, contractor, construction manager, general contractor or others need to report this information to the US Dept of Labor? If so, how often?

*As specified in the Davis-Bacon labor standards clauses (29 CFR 5.5(a)(3)), contractors must maintain a record of workers’ payroll and hours worked, including the name, address, and social security number of each such worker, their correct labor classification(s), hourly rates of wages paid, including rates of contributions or costs anticipated for bona fide fringe benefits and how those rates were computed, daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices under approved apprenticeship programs must also maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates required by the applicable programs. The contractor must make these records available to the Department of Labor or the funding recipient upon their request.*

*Contractors must also submit on a weekly basis a copy of payrolls, including a signed Statement of Compliance, to the federal or state agency contracting for or financing the work. Contractors may use optional form WH-347 for their certified payrolls, or may use any other format, so long as that format includes the same information and an identical Statement of Compliance. Where the funding agency or funding recipient has established guidelines or procedures for the submission of certified payrolls, such as an electronic payroll submission system, contractors should comply with those procedures. Contractors do not need to submit a copy of the certified payrolls to the Department of Labor weekly, but like other records, the contractor must provide the certified payrolls upon the Department of Labor’s request.*

1. Who is our primary contact for the State of Kentucky for Davis-Bacon wage rate questions? Is it one person or are there regional representatives? Should a school district send questions direct to US Dept of Labor or KDE?

*It depends. If you have questions regarding the applicability of the DBA, please contact us first, and we will follow up with the USDOL, WHD as needed. If you have questions about prevailing wage requirements, please contact the WHD. The WHD Louisville District Office is located in the Romano Mazzoli Federal Building, 600 Dr. Martin Luther King Jr. Place. Room 352, Louisville, KY 40202, or you may contact the office by phone at (502) 582-5226 or call the general number at 1-866-4-USWAGE (1-866-487-9243).*

1. What is the wait time for a response to Davis-Bacon questions?

*It depends on the complexity of the question.*

1. Do Davis-Bacon wage requirements apply to state requirements concerning the KY Construction in Fairness Act? This act requires a time limit from date billed to date paid before potential penalties are considered or incurred.

Each state will have reporting requirements and the funding agency will also have reporting requirements. Please contact the appropriate agency for specific guidance.

1. If a worker has an issue in the field, how do they know who to contact? What are the procedures?

*The wage determination (including any additional classifications and wage rates conformed) and a*[*Davis-Bacon poster (WH-1321)*](https://www.dol.gov/agencies/whd/posters/dbra)*must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen. The WH-1321 poster may be obtained at no charge from offices of the*[*WHD*](https://www.dol.gov/agencies/whd)*. In the absence of such posted information, any person who wants to determine if the project is covered should contact the federal agency funding or assisting the project or the WHD.*

*Any person who wishes to file a complaint with the Department of Labor regarding alleged violations of the DBRA should contact the WHD directly. The WHD Louisville District Office is located in the Romano Mazzoli Federal Building, 600 Dr. Martin Luther King Jr. Place. Room 352, Louisville, KY 40202, or you may contact the office by phone at (502) 582-5226 or call the general number at 1-866-4-USWAGE (1-866-487-9243).*

1. What are the requirements for posting Davis-Bacon requirements on a job site? Should this be posted in bid documents for contractors to be aware of the requirements or is there a reference (website?) for posting requirements for workers to have access to?

*See response to Question #8.*

1. If a complaint is turned in to the federal government what are the steps or where can we find the steps that are taken that take us from the filing of the complaint all the way through any determinations? What enforcement measures are carried out and by whom?

*WHD Fact Sheet #44 outlines the general investigative process. In a DBRA investigation, the contractor and the contracting agency are notified when an investigation is initiated by the WHD. If a subcontractor is the subject of the investigation, the prime contractor will also be notified when an investigation is initiated. The contracting agency may contact WHD at any time to get an update. The contracting agency will be invited to the final conference with the contractor.*

*In general, workers and third parties may file a complaint with any WHD office if they believe a contractor has failed to comply with Davis-Bacon labor standards. After receiving the complaint, WHD may initiate an investigation or may seek to resolve the complaint through conciliation. WHD also agency-initiates investigations to determine compliance.*

*In a Davis-Bacon labor standards investigation, WHD inspects relevant records, such as contracts, certified payrolls as well as other supporting payroll records, records relating to apprenticeship, and records of hours worked. WHD interviews the contractor and the contractor’s workers at the worksite during normal work hours. WHD may also conduct phone or mail interviews as needed. Funding agencies, funding recipients and contractors are required to cooperate with authorized representatives of WHD in all aspects of an investigation. Through the entirety of the investigation, WHD keeps the complainant(s) information, if any, confidential.*

*Federal or state funding agencies may also conduct their own investigations. Federal funding agencies may establish their own guidelines for such investigations, provided that such guidelines are consistent with WHD’s guidelines in light of DOL’s coordinating role in the administration and enforcement of the Davis-Bacon and Related Acts.*

1. Must Davis-Bacon wages be utilized for the wages for the entire project if only a portion of the project funds are ESSER funds?

*As mentioned above in question #1, when a project receives any funding that requires payment of Davis-Bacon prevailing wages, construction work at the site of the work for the entire project is generally subject to Davis-Bacon prevailing wage requirements, regardless of how the funding recipient chooses to allocate that funding among the different activities relating to that project.*

1. Must contractors/suppliers holding master agreements with the state utilize Davis-Bacon Wages for projects funded by ESSER funds?

*In general, projects receiving ESSER funding will be subject to the Davis-Bacon requirements. If there is a question as to whether the Davis-Bacon labor standards apply to a particular project, funding recipients should refer to the materials provided by the funding agency applicable to the ESSER-funding or assistance to determine if Davis-Bacon labor standards apply to the federal funding or assistance. If the materials do not specify that the ESSER funding or assistance requires Davis-Bacon labor standards to be incorporated in a contract for construction, but the funding recipient believes that the funding in question may or should be covered, the funding recipient should contact the funding agency or WHD for assistance. Contractors should reference the solicitation materials provided by the funding recipient or funding agency to determine if the project in question is subject to Davis-Bacon labor standards. If the materials do not specify that the ESSER-funded project requires Davis-Bacon labor standards to be incorporated into the construction contract but the contractor believes that the funding in question may or should be subject to Davis-Bacon labor standards, the contractor should contact the funding recipient or funding agency for additional assistance.*

1. Who will determine the prevailing wage on the project if it varies in scope between building, heavy, etc.

*It is the responsibility of the contracting officer/Federal agency representative to advise contractors which schedule of prevailing wages shall be applied to the various construction items in the bid specifications. Because of the complexities in the application of multiple schedules, the contracting officer should consult with the*[*Wage and Hour Division*](https://www.dol.gov/agencies/whd/contact)*to resolve any questions.*

1. What are the types of construction represented in wage determinations?

*Construction projects are generally classified as either*[*Building, Heavy, Highway or Residential*](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/memo-131.pdf)*for purposes of issuing wage determinations. Wage schedules for one or more of these construction categories may have application to construction items contained in a proposed construction project. Guidelines for the selection of proper wage schedules are set forth in*[*All Agency Memoranda No. 130 (March 17, 1978) and No. 131 (July 14, 1978)*](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/memo-131.pdf)*.*[*All Agency Memoranda No. 236*](https://www.dol.gov/sites/dolgov/files/WHD/AAM/AAM236.pdf)*was published on December 14, 2020 and updates the threshold identified in AAM 131 for incorporating multiple Davis-Bacon wage determinations and should be reviewed as well when determining applicability of multiple wage determinations to a single project. Any questions regarding the application of these guidelines to a particular project, or any disputes regarding the application of the wage schedules issued for the various construction categories, are to be referred to the*[*Wage and Hour Division*](https://www.dol.gov/agencies/whd/contact)*, together with relevant information, including a complete description of the project and area practice.*

1. Who determines if a contractor and their workers meet the criteria in order to receive the prevailing wage?

*Contractors and subcontractors are required to pay Davis-Bacon prevailing wage rates to laborers and mechanics who perform work on DBRA covered projects, including bona fide apprentices and trainees. Laborers and mechanics include workers who perform primarily manual or physical work, including those who use the tools of a trade. However, workers such as timekeepers, inspectors, architects or engineers, or anyone exempt under the part 541 regulations under the Fair Labor Standards Act, are generally not considered laborers or mechanics and, therefore, are not required to be paid prevailing wages because they do not generally perform primarily physical or manual work or use the tools of a trade. In addition, prevailing wages generally are only required to be paid to laborers and mechanics when they are employed on the site of the work, as defined in 29 CFR 5.2(l).*

1. Who is responsible if there are supersedeas wage changes and do those apply once a project has been bid?

*As discussed in Question # 3, the wage determination incorporated into a bid solicitation and related contract award establishes the minimum wage rates and fringe benefits that generally must be paid for the entire term of the contract.*

1. If you use federal funds as just one funding source for a project, do these rules apply to the entire project?  For example, you use local bond revenue, SFCC funding, and ESSER for a large scale renovation project that includes HVAC work.  Does Davis-Bacon (and other rules) apply to all wages paid on the project or just to the bits of work that are supposedly funded by ESSER?  It seems like it would be impossible to separate the work of the subcontractors for various pieces of the project and pay different rates accordingly.

*As discussed in question #1, when a project receives any funding that requires payment of Davis-Bacon prevailing wages, construction work at the site of the work for the entire project is generally subject to Davis-Bacon prevailing wage requirements, regardless of how the funding recipient chooses to allocate that funding among the different activities relating to that project.*

1. Are there additional steps a district would have to take to later dispose of an asset that we used ESSER funds to purchase or improve?

*The district should follow any applicable property disposal guidelines.*

1. What other differences are there when using federal funds as opposed to local/state funding for construction (besides Davis Bacon)?

*If the Davis-Bacon labor standards do not apply, because there are no federal funds or other federal assistance being provided under a Davis-Bacon Related Act, the USDOL will not enforce the Davis-Bacon labor standards provisions or other requirements of the DBRA or its implementing regulations. However, the Fair Labor Standards Act, and other federal and/or state labor laws, may be applicable.*

1. If a district proceeds with a construction project (whether typical Design-bid-build or a Guaranteed Energy Savings Contract), and the district intends to use multiple sources of funds to potentially include Restricted Funds, ESSER funds, and a General Fund bond (in the case of a GESC), does the whole project have to adhere to Davis Bacon Wage Rates, or just the portion using ESSER funds?

*As discussed for Question # 1, when a project receives any funding that requires payment of Davis-Bacon prevailing wages, construction work at the site of the work for the entire project is generally subject to Davis-Bacon prevailing wage requirements, regardless of how the funding recipient chooses to allocate that funding among the different activities relating to that project.*