



Texas Water Development Board
Guidance on Davis-Bacon Wage Rate
Requirements for State Revolving Fund
Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB Financial Assistance website at:

<http://www.twdb.texas.gov/financial/instructions/index.asp>

Search by either the document number or name.

I. OVERVIEW

Davis-Bacon and Related Acts (Davis-Bacon) prevailing wage requirements apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) and to any construction project carried out, in whole or in part, by assistance made available by the Drinking Water State Revolving Fund (DWSRF). The Lead Service Line Replacement (LSLR) Program and Emerging contaminants (EC) Programs are funded under DWSRF (LSLR and EC) and CWSRF (EC) and are subject to Davis-Bacon.

For the CWSRF and DWSRF programs, the Davis-Bacon prevailing wage requirements apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair, including painting and decorating, of public buildings or public works. This includes any treatment works project under the CWSRF or any construction project under the DWSRF.

Contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The prevailing wage requirements apply to all State Revolving Fund (SRF) financial assistance projects, under which the Environmental Protection Agency assists through federal grants and loans, and loan guarantees.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act (CWHSSA), as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

II. ROLES AND RESPONSIBILITIES

The following generally lists the roles and responsibilities. The responsibilities are not all-inclusive, but a general summary for each party.

TWDB Responsibilities include:

- Verify bidding documents include wage determinations.
- Verify prime contractor contracts contain wage determinations and labor provisions.
- Responsible for reviewing weekly contractor certified payroll submissions.
- Conduct onsite interviews with laborers and mechanics.
- Conduct spot-check reviews of payrolls and related records, as necessary.
- Report potential violations.
- Maintain full documentation for at least 3 years.

Applicant/Subrecipient Responsibilities include:

- Obtaining Department of Labor's wage determinations from the SAM.gov website.
- Verify bidding documents include wage determinations.
- Verify prime contractor contacts contain wage determinations and labor provisions.
- Responsible for reviewing weekly contractor certified payroll submissions.
- Conduct onsite interviews with laborers and mechanics.
- Conduct spot-check reviews of payrolls and related records, as necessary.
- Report potential violations.
- Maintain full documentation for at least 3 years.

Prime Contractor Role Responsibilities Include:

- Post Davis-Bacon Posters at the job site.
- Post prevailing wage rates at the job site.
- Provide confidential space for interviews.
- Provide records upon request.
- Prepares and submits certified payrolls for its own employees to contracting officer weekly.
- Submits certified payrolls for all subcontractor employees to contracting officer weekly.
- Reviews wage determination and works with contracting officer to request additional classifications when needed.
- Provides subcontractors with labor standards, guidance, and responsibilities concerning Davis-Bacon requirements.

Subcontractor Role Responsibilities Include:

- Prepares & submits certified payrolls each week for its own employees to prime contractor.
- Provides lower tier subcontractors with labor standards, guidance, and responsibilities concerning Davis-Bacon requirements.
- Reviews wage determination and works with prime contractor to obtain additional classifications if needed.
- Posts Davis-Bacon Poster and wage determinations on job site.
- Gives interviewer confidential access to employees onsite.

III. WAGE RATE REQUIREMENTS

The following wage rate requirements apply to entities receiving financial assistance under the CWSRF and DWSRF programs and will be incorporated into the associated legal instruments. **These entities, such as cities, districts, water supply corporations or private companies, are referred to as "subrecipients" within this document.**

Subrecipients must adhere to the requirements in Sections 1-5 in Appendix 1 (for governmental entities) or Appendix 2 (for non-governmental entities).

1. CWSRF

A subrecipient must comply with the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) in all procurement contracts and must require contractors to include compliance with section 513 of the Federal Water Pollution Control Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the treatment works construction project must contain in full in any contract in excess of \$2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 513 requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements.

2. DWSRF

A subrecipient must comply with the requirements of section 1452(a)(5) of the Safe Drinking Water Act (42 U.S.C.300j-12(a)(5)) in all procurement contracts and must require contractors to include compliance with section 1452(a)(5) of the Safe Drinking Water Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction project must contain in full in any contract in excess of \$2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 1452(a)(5) (42 U.S.C.300j-12(a)(5)) requires compliance with 42 U.S.C.300j-9(e) which in turn requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements.

IV. COMPLIANCE PROCEDURES

To be held in compliance and satisfy this federal requirement, entities will need to do the following:

1. Wage Determination

U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at <https://sam.gov/content/wage-determinations>. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the subrecipient's contracting organization must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur (generally this is the project county). While the solicitation remains open, the subrecipient must monitor <https://sam.gov/content/wage-determinations> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipient may request a finding from TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination.

If a contract is not awarded within 90 days after bid opening, any revised general wage determination issued prior to award of the contractor is effective for that contract; unless the TWDB, at the request of the subrecipient, requests and obtains an extension of the

90-day period from DOL ([29 CFR 1.6\(c\)\(2\)\(ii\)\(D\)](#)).

Wage determinations must be updated after contract award when (1) the contract has a change order that adds substantial construction, alternation, and/or repair work not within the original scope and the contract time is extended, or (2) the contract is a “work order” type contract (a general commitment to construction as the need arises, but exact construction is not necessarily specified). For “work order” type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract’s award (or each anniversary date of the beginning of construction when there is no award). (29 CFR 1.6(c)(2)(iii))

2. Insert wage rate requirements in full for all contracts and subcontracts in excess of \$2,000

The subrecipient must ensure all prime contracts require the same full text in any subcontracts. Davis Bacon applies regardless of whether the terms and conditions are included or not in all contracts and subcontracts. **Include the following text in all contracts**, “By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA requirements for contractors](#).”

If the subrecipient is a governmental entity such as a city or district, it must insert in full the contract clauses found in Appendix 1, Section 3, Section 4 (if the contract exceeds \$100,000), and Section 5.

If the subrecipient is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in Appendix 2, Section 3, Section 4 (if the contract exceeds \$100,000), and Section 5.

3. Monthly Certification

A Monthly Davis Bacon Wage Rate Certificate of Compliance must be completed by the subrecipient of the SRF funding and submitted monthly to TWDB once construction has begun. (Use [Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner \(Subrecipient\) DB-0154](#)).

4. Contractor Payroll Requirements

The contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of [29 CFR 5.5](#), which are incorporated into the actual construction contract. Contractors/subcontractors must furnish weekly a statement with respect to the wages paid to each employee during the preceding week. The signature by the contractor, subcontractor, or authorized officer/employee must be an original handwritten signature or a legally valid electronic signature (e.g., DocuSign). They may use the Department of Labor (DOL) Payroll Form WH-347 and weekly Statement of Compliance on the reverse, or their own payroll form with all of the same data elements as the DOL Payroll Form WH-347, and the TWDB’s form, [Statement of Compliance Certification by Contractor for SRF, DB-0155](#). The DOL Payroll Form WH-347 can be found under the forms section of this document or at the following link: www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification. (See [DOL Payroll Form WH-347](#))

5. Interviews

The subrecipient must periodically interview a sufficient number of employees entitled to the Davis-Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. All interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) found at the following link: https://www.gsa.gov/system/files/SF_1445.pdf or equivalent documentation to memorialize the interviews. The subrecipient must establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. Subrecipients must immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. (See Section 5 of Appendix 1 [governmental entities] and Appendix 2 [non-governmental entities]).

6. Payroll Records

Certified payroll must be delivered by the contractor or subcontractor within seven (7) days after the regular payment date of the payroll period. Certified payroll records are required to be retained by the subrecipient and contractor for three (3) years after completion of the construction project. The subrecipient must periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. (See Section 5 of Appendix 1 and 2).

The payroll records must include the following: the name, Social Security number, last known address, telephone number, and email address of each laborer and mechanic; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

7. Wage Rates Poster

Post the required Poster (WH-1321) and applicable wage rates at the construction site in a prominent and accessible place where it can be easily seen by the workers. The wage rate poster may be found at www.dol.gov/whd/programs/dbra/wh1321.htm. (See [Davis-Bacon Wage Rate Poster, WH-1321](#))

8. Report Violations

Subrecipients must immediately report violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the appropriate DOL Wage and Hour Division (WHD) Office listed at <http://www.dol.gov/whd/america2.htm>. (See Section 5 of Appendix 1 and Appendix 2.)

V. DAVIS-BACON GENERAL WAGE DETERMINATIONS

A "wage determination" is the listing of wage and fringe benefit for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. DOL has determined to be prevailing in a given area for a particular type of construction.

In general, the project area is the county where the project will take place. For the type of construction, the Davis-Bacon Wage Determinations are classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. A brief outline of the definitions for each schedule is listed below.

- **Construction Type: Residential determination**
This determination includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
- **Construction Type: Building determination**
This determination includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.
- **Construction Type: Highway determination**
This determination includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.
- **Construction Type: Heavy determination**
This determination includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Entities should review their contractor's wage decisions and confirm they provide an adequate classification of the labor required for the specific construction contract. Most CWSRF and DWSRF projects will fall under the "Heavy" construction type, but entities should ask their consulting engineers if unsure.

Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work (i.e. a building is constructed in a water

treatment facility). This is described in more detail in DOL's All Agency Memorandum 130 with Addendum 131. See the DOL's website <http://www.dol.gov/whd/programs/dbra/memorand.htm>. In such cases, the contracting agency must incorporate the applicable wage determination for each type of construction involved that is anticipated to be substantial. The contracting agency is responsible for designating the specific work for which each incorporated wage determination applies ([29 CFR 1.6\(b\)\(1\)](#)). The contracting agency should designate the work or part thereof applies per Federal Acquisition Regulations (FAR) 22.404-2 thru 404-3 (www.acquisition.gov/far/22.404-2). Should overlaps occur in the wage classification schedules for the contract(s), the Owner may consider adopting the higher rate classification.

<https://www.acquisition.gov/browse/index/far>

In all cases, the entity is responsible to ensure an adequate classification is provided for compliance with the law. Where Contractors alert the Owner that the classification is inadequate, the Owner should work with the Contractor and the DOL to address any valid concerns. See the Contact Information in Section VI, herein, for additional resources.

VI. REQUESTING ADDITIONAL WAGE DETERMINATION (USING SF-1444)

If the wage determinations found at <https://sam.gov/content/wage-determinations> are missing a wage rate needed for the specific job classification, construction type, and/or project location, it will be necessary to seek a conformance from U.S. Department of Labor (DOL). A conformance is a customized wage rate generally negotiated by the contractor and his or her employee(s) and approved by DOL and is only valid for the particular project for which it is granted.

Contractors are responsible for (1) determining the appropriate staffing necessary to perform the contract work, (2) complying with minimum wage and benefits requirements for each classification performing work; and (3) initiating the request for approval for additional classification along with the proposed wage and benefit rates.

The awarded Contractor initiates the request to prepare the form SF 1444. Ideally, the conformance process should be initiated after the bid is awarded, but before work has started on the project. Once the bid is awarded, the subrecipient should ask the winning bidder to review the wage determination to assess whether any job classifications necessary for the completion of the project are missing from the DOL's wage determination for the project's area.

The prime contractor for the SRF construction contract initiates the conformance request by completing a Standard Form (SF) 1444 – Request for Authorization of Additional Classification and Rate.

See Appendix 3 for instructions on completing SF 1444 – Request for Authorization of Additional Classification and Rate.

VII. CONTACT INFORMATION

All questions regarding Davis-Bacon guidance can be directed to:

- U.S. Department of Labor Wage and Hour Division
1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627,
Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board [Project Team Manager for your region](#).

Additional Resources:

1. For Wage Determinations applicable to construction projects in Texas:
<https://sam.gov/content/wage-determinations>
2. For more information on prevailing wage and wage determinations visit the Prevailing Wage Resources: www.dol.gov/agencies/whd/government-contracts/construction/seminars/resources
3. The United States Department of Labor website:
www.dol.gov/whd/govcontracts/dbra.htm

The webpage provides an overview, compliance assistance material, poster information, recordkeeping, DOL contact information and more.
4. Davis-Bacon and Related Acts (DBRA) Frequently Asked questions
More in-depth information can be accessed at the Department of Labor (DOL) website:
www.dol.gov/whd/programs/dbra/faqs.htm
5. All Agency Memorandum No. 244 Final Rule: Updating the Davis-Bacon and Related Acts Regulations at DOL website:
www.dol.gov/sites/dolgov/files/WHD/AAM/AAM244.pdf

Memorandum No. 244 provides an overview of the most significant provisions of the Department's recently published final rule, Updating the Davis-Bacon and Related Acts Regulations, as well as an explanation of when the various provisions became effective.

All Agency Memoranda are available on the DOL website:
www.dol.gov/agencies/whd/government-contracts/construction/all-agency-memorandum.

6. Updating the Davis-Bacon and Related Acts Regulations on the DOL website:
www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon

This webpage provides additional information on the Final Rule for the Davis-

Bacon and Related Acts, that took effect on October 23, 2023. It includes a webinar, comparison chart, and text of the final rule.

7. Davis-Bacon and Related Acts for EPA grant awards including links to EPA requirements for subrecipients and contract provisions for Contractors and Subcontractors on EPA website: www.epa.gov/grants/davis-bacon-and-related-acts-dbra

1. Contact Information – Department of Labor Texas Offices

<p>Dallas District Office US Dept. of Labor Wage & Hour Division 575 S. Griffin, Ste. 707 Dallas, TX 75202</p>	<p>Phone: (817) 861-2150 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Jesus Valdez District Director</p>
<p>Houston District Office US Dept. of Labor Wage & Hour Division 8701 S. Gessner Drive, Suite 1164 Houston, TX 77074-2944</p>	<p>Phone: (713) 339-5500 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Robin Mallet District Director</p>
<p>McAllen District Office US Dept. of Labor Wage & Hour Division 1101 E. Hackberry Ave., Suite 400 McAllen, TX 78501</p>	<p>Phone: (956) 682-4631 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Cynthia Cantu-Flores District Director</p>
<p>Corpus Christi Area Office US Dept. of Labor Wage & Hour Division Wilson Plaza 606 N. Carancahua, Suite 618 Corpus Christi, Texas 78401</p>	<p>Phone: (361) 888-3152 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Vacant District Director</p>
<p>San Antonio District Office US Dept. of Labor Wage & Hour Division Northchase 1 Office Building 10127 Morocco, Suite 140 San Antonio, TX 78216</p>	<p>Phone: (210) 308-4515 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Cynthia Ramos District Director</p>
<p>Austin District Office US Dept. of Labor Wage & Hour Division Thornberry Federal Building 903 San Jacinto Blvd., Suite 1600 Austin, TX 78701</p>	<p>Phone: (512) 916-5638 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Nicole Sellers District Director</p>
<p>El Paso Area Office US Dept. of Labor Wage & Hour Division 700 E. San Antonio St., Rm. B-400 El Paso, TX 79901</p>	<p>Phone: 915-534-6426 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Jacobo Valenzuela District Director</p>
<p>Lubbock Area Office US Dept. of Labor Wage & Hour Division 71205 Texas Ave., Room 607 Lubbock, TX 79401</p>	<p>Phone: 806-472-6450 1-866-4-USWAGE (1-866-487-9243)</p>	<p>Ryan Martin District Director</p>

Reference: www.dol.gov/agencies/whd/contact/local-offices#tx

VIII. FORMS

The following forms are available on the TWDB Program Guidance & Manuals website at www.twdb.texas.gov/financial/instructions/index.asp

- Monthly Davis-Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient), DB-0154
- Statement of Compliance Certification by Contractor for State Revolving Funds Federal Davis-Bacon Requirements, DB-0155

The following forms are available on the Department of Labor website at www.dol.gov/agencies/whd/government-contracts/construction/forms

- Standard Form 1445, Labor Standards Interview
- U.S. Department of Labor Payroll form WH-347

The following poster is available on the Department of Labor website at www.dol.gov/whd/programs/dbra/wh1321.htm

- Davis-Bacon Poster, WH-1321

IX. Appendix 1 – Applies to Governmental Entities (such as Cities and Districts)

1. Applicability of the Davis-Bacon and Related Acts (DBRA) Prevailing Wage Requirements

DBRA prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the Clean Water State Revolving Fund and to any construction project carried out in whole or in part by assistance made available by the Drinking Water State Revolving Fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DBRA applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DBRA will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DBRA. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor <https://sam.gov/content/wage-determinations> weekly to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. In the request, the subrecipient shall include documentation of the bid date and time and the DOL wage modification date. The TWDB will review the documentation and provide a report of its findings to the subrecipient. The subrecipient shall keep the report in the project contract file.

(ii) If the subrecipient does not award the contract within 90 days of bid opening, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the subrecipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DBRA by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather

than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from <https://sam.gov/content/wage-determinations> into the ordering instrument. For “work order” type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract’s award (or each anniversary date of the beginning of construction when there is no award). ([29 CFR 1.6\(c\)\(2\)\(iii\)](#))

(c) Subrecipients shall review all subcontracts subject to DBRA entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient’s contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL’s wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient’s contractor must be compensated for any increases in wages resulting from the use of DOL’s revised wage determination.

3. Contract and Subcontract Provisions

The subrecipient shall insert in full in any contract to which Davis-Bacon and Related Acts apply the following clauses. Reference to www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts and [29 CFR 5.5](#).

The Contractor acknowledges that by entering into this contract with a contracting agency, funded by an EPA Assistance agreement (grant), the Contractor agrees to comply with the following terms and conditions in accordance with 29 CFR 5.5, if this contract is for activities covered under Davis-Bacon and Related Acts (DBRA) and exceeds (or will exceed) \$2,000. Definitions for many of the terms used below are provided in 29 CFR 5.2.

(1) Minimum wages.

(i) Wage rates and fringe benefits

All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of [29 CFR 5.5\(a\)\(1\)\(v\)](#) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in [29 CFR 5.5\(a\)\(4\)](#).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage

determination (including any additional classification and wage rates conformed under [29 CFR 5.5\(a\)\(1\)\(iii\)](#) of this section) and the [Davis-Bacon poster \(WH-1321\)](#) 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 by the workers.

(ii) Frequently recurring classifications

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to [29 CFR 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to [29 CFR 5.5\(a\)\(1\)\(iii\)](#), provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is used in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with [29 CFR 5.5\(a\)\(1\)\(iii\)\(A\)\(3\)](#) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the

- classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to the TWDB. The TWDB will transmit the request to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (E) The contracting officer must promptly notify the contractor of the action taken by the [Wage and Hour Division under paragraphs \(a\)\(1\)\(iii\)\(C\) and \(D\)](#) of this section. The contractor must furnish a written copy of such determination to each affected worker, or it must be posted as part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in [29 CFR 5.28](#), that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding.

(i) Withholding requirements

The EPA, grant recipient, subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in [29 CFR 5.2](#)).

The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in [29 CFR 5.5\(a\)\(3\)\(iv\)](#) of this section, the **EPA, grant recipient, subrecipient at any tier, and/or contracting agency** may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with [29 CFR 5.5\(a\)\(2\)\(i\)](#) or [29 CFR 5.5\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) Records and certified payrolls

(i) Basic record requirements

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name; Social Security number; last known address, telephone number, and email of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under [29 CFR 5.5\(a\)\(1\)\(v\)](#) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship.

Contractors with apprentices working under approved programs must maintain written evidence of the apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements

(A) Frequency and method of submission

The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts- covered work is performed, certified payrolls to the **contracting agency** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the **contracting agency**. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)\(B\)](#), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

- (1) That the certified payroll for the payroll period contains the information required to be provided under [29 CFR 5.5\(a\)\(3\)\(iii\)](#), and such information and

records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of Optional Form WH-347

The weekly submission of a properly executed certification set forth on the reverse side of [Optional Form WH-347](#) shall satisfy the requirement for submission of the "Statement of Compliance" required by [29 CFR 5.5\(a\)\(3\)\(ii\)\(C\)](#).

(E) Signature

The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(G) Length of certified payroll retention

The contractor or subcontractor must preserve all certified payrolls during the course of the work for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents

The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access

(A) Required record disclosure and access to workers

The contractor or subcontractor must make the records required under

paragraph (a)(3)(i) through (iii) of this section, and any other documents that the **EPA, recipient, or subrecipient at any tier, and/or contracting agency**, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable [29 CFR 5.1](#), available for inspection, copying, or transcription by authorized representatives of the **TWDB, EPA, recipient, or subrecipient at any tier, and/or contracting agency**, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the contractor or subcontractor fails to submit the required records or to make them available, or refuse to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to [29 CFR 5.12](#). In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures

Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Environmental Protection Agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA, recipient, or subrecipient at any tier, contracting agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and Equal Employment Opportunity

(i) Apprentices

(A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to [29 CFR 5.5\(a\)\(4\)\(i\)\(D\)](#). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in [29 CFR 5.5\(a\)\(4\)\(i\)\(A\)](#), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity

The use of apprentices and journey workers under this part must be in conformity

with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

(5) Is reserved.

(6) Subcontracts

The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section or a link to the **DBRA Requirements for Contractors and Subcontractors Under EPA Grants** document on EPA's [Contract Provisions for Davis-Bacon and Related Acts](#) webpage, along with the applicable wage determination(s) and such other clauses or contract modifications as the Environmental Protection Agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier Subcontractors, and may be subject to debarment, as appropriate.

(7) – (9) are reserved.

(10) Certificate of Eligibility

- (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

(11) Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (iii) Cooperating in any investigation or other compliance action, or testifying in any

proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

4. Contract Provisions for Contracts in Excess of \$100,000

For contracts over \$100,000, additional Terms and Conditions apply. The DBRA Requirements for Contracts in Excess of \$100,000 Under EPA Grants document is available on EPA's [Contract Provisions for Davis-Bacon and Related Acts](#) webpage provides the additional requirements provided under [29 CFR 5.5](#). This information is included as follows:

(b) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by [29 CFR 5.5\(a\)](#), above or [29 CFR 4.6](#). As used in this paragraph, the terms "laborers and mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#), in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [29 CFR 5.5\(b\)\(1\)](#).

(3) Withholding for unpaid wages and liquidated damages.

(i) Withholding process. The subrecipient may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this [29 CFR 5.5\(b\)](#) on this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same prime contractor (as defined in [29 CFR 5.2](#)). The necessary funds may be

withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with [29 CFR 5.5\(a\)\(2\)\(i\)](#) or [29 CFR 5.5\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in [29 CFR 5.5\(b\)](#), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by [29 CFR 5.1](#), the Subrecipient must insert a clause requiring that the contractor or subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each workers' correct classification(s) of work actually performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by [29 CFR 5.1](#) to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by [29 CFR 5.1](#). Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of [29 CFR 5.5](#). No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of [29 CFR 5.5](#) or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#) is entered into without the incorporation of the clauses required by [29 CFR 5.5](#), the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by [29 CFR 5.5](#) must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under [29 CFR 5.13](#).

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with [29 CFR 5.5\(e\)](#).

(2) (i) Certified payrolls submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by [29 CFR 5.5](#) and the applicable statutes referenced in [29 CFR 5.1](#). Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under [29 CFR 5.5\(a\)\(3\)](#). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(1) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#), or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by [29 CFR 5.1](#).

(2) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(3) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(4) Where the underpayments disclosed by such an investigation or other compliance action total \$1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" ([5 U.S.C. 552](#), see part 70 of this subtitle) and the "Privacy Act of 1974" ([5 U.S.C. 552a](#), see part 71 of this subtitle).

X. Appendix 2 – Applies to Non-Governmental Entities (such as Water Supply Corporations and Private Companies)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations

(a) Subrecipients must obtain proposed wage determinations for specific localities at <https://sam.gov/content/wage-determinations>. After the subrecipient obtains its proposed wage determination, it must submit the wage determination to the TWDB for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the TWDB.)

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from <https://sam.gov/content/wage-determinations> into the ordering instrument.

(d) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

The subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in [29 CFR 5.1](#), the following clauses:

(1) Minimum wages.

(i) Wage rates and fringe benefits.

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of [29 CFR 5.5\(a\)\(1\)\(v\)](#); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in [29 CFR 5.5\(a\)\(4\)](#). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under [29 CFR 5.5\(a\)\(1\)\(iii\)](#)) and the Davis-Bacon poster (WH-1321) 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 by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <https://sam.gov/content/wage-determinations>.

(ii) Frequently recurring classifications.

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR Part 1](#), a wage determination may contain, pursuant to [§ 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to [29 CFR Part 5.5\(a\)\(1\)\(iii\)](#), provided that:

- (1) The work to be performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with [29 CFR 5.5\(a\)\(1\)\(iii\)\(A\)\(3\)](#). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance.

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor via email to DBAconformance@dol.gov, and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under [29 CFR 5.5\(a\)\(1\)\(iii\)\(C\)](#) and [\(D\)](#). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to [29 CFR 5.5\(a\)\(1\)\(iii\)\(C\)](#) and [\(D\)](#) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in [§ 5.28](#), that the applicable standards of the Davis-Bacon Act have been met.

The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding.

(i) Withholding requirements. The subrecipient(s) may, upon its own action or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in [29 CFR 5.5\(a\)](#) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in [§ 5.2](#)). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay laborers and mechanics, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in [29 CFR 5.5\(a\)\(3\)\(iv\)](#), the EPA may, on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with [29 CFR \(a\)\(2\)\(i\)](#) or [\(b\)\(3\)\(i\)](#), or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) Records and certified Payrolls.

(i) Basic Record requirements.

(A) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise work in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required. Such records shall contain the name, last known address, social security number, telephone number, and email address of each such worker, each worker's correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act), daily and weekly number of hours actually worked in total and on each covered contract, deductions made, and actual wages paid.

(C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under [29 CFR 5.5\(a\)\(1\)\(v\)](#) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements.

(A) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the subrecipient, that is, the entity that receives the funds from the TWDB. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature (e.g. DocuSign); the system allows the contractor, the contracting agency, and the Department

of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system. Such documentation shall be available on request of the TWDB or EPA.

(B) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)\(B\)](#), except that full social security numbers and last known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the employee's social security number). The required weekly certified payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor site. It is not a violation of this section for a prime contractor to require a subcontractor to provide full social security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the TWDB (or the applicant, sponsor, owner, or other entity as the case may be, that maintains such records).

(C) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or their agent who pays or supervises the payment of the persons working on the contract and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under [29 CFR 5.5 \(a\)\(3\)\(ii\)](#), the appropriate information and basic records are being maintained under [29 CFR 5.5 \(a\)\(3\)\(i\)](#), and that such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of the Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347

will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph [29 CFR 5.5\(a\)\(3\)\(ii\)\(C\)](#).

(E) Signature. The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature (e.g., DocuSign).

(F) Falsefication. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [section 1001 of title 18](#) and [section 3729 of title 31](#) of the United States Code.

(G) Length of certified payroll retention. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access.

(A) Required record disclosures and access to workers. The contractor or subcontractor must make the records required under [29 CFR 5.5\(a\)\(3\)\(i\)](#) through [\(iii\)](#) of this section, and any other documents that the EPA or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the TWDB, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to [29 CFR 5.12](#). In addition, any Contractor or other person that fails to submit the required records or make those records available to TWDB and WHD within the time TWDB/WHD requests that the records be produced will be precluded from introducing as evidence in an administrative

proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the TWDB, EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and equal employment opportunity

(i) Apprentices.

(A) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

- (C) Apprenticeship ratio. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to [29 CFR 5.5\(a\)\(4\)\(i\)\(D\)](#) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in [29 CFR 5.5\(a\)\(4\)\(i\)\(A\)](#) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (D) Reciprocity of ratios and wage rates. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) applicable within the locality in which construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.
- (ii) Equal employment opportunity. The use of apprentices and journeymen under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and [29 CFR part 30](#).
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5\(a\)\(1\)](#) through [\(11\)](#) along with the applicable wage determination(s) and such other clauses or contract modifications as the EPA determines may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
- (7) Contract termination; debarment. A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1](#),

[3](#), and [5](#) are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), TWDB, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [29 CFR 5.12\(a\)](#).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [29 CFR 5.12\(a\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#)

(11) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

4. Contract Provision for Contracts in Excess of \$100,000

(b) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by [29 CFR 5.5\(a\)](#), above or [29 CFR 4.6](#). As used in this paragraph, the terms “laborers and mechanics” include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#), in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [29 CFR 5.5\(b\)\(1\)](#).

(3)Withholding for unpaid wages and liquidated damages.

(ii) Withholding process. The subrecipient may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this [29 CFR 5.5\(b\)](#) on this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same prime contractor (as defined in [29 CFR 5.2](#)). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with [29 CFR 5.5\(a\)\(2\)\(i\)](#) or [29 CFR 5.5\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in [29 CFR](#)

[5.5\(b\)](#), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by [29 CFR 5.1](#), the Subrecipient must insert a clause requiring that the contractor or subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each workers' correct classification(s) of work actually performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by [29 CFR 5.1](#) to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by [29 CFR 5.1](#). Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of [29 CFR 5.5](#). No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of [29 CFR 5.5](#) or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#) is entered into without the incorporation of the clauses required by [29 CFR 5.5](#), the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by [29 CFR 5.5](#) must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses

into its contract, and must promptly refer the dispute to the Administrator for further proceedings under [29 CFR 5.13](#).

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with [29 CFR 5.5\(e\)](#).

(2) (i) Certified payrolls submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by [29 CFR 5.5](#) and the applicable statutes referenced in [29 CFR 5.1](#). Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under [29 CFR 5.5\(a\)\(3\)](#). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing

Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(5) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#), or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by [29 CFR 5.1](#).

(6) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(7) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(8) Where the underpayments disclosed by such an investigation or other compliance action total \$1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" ([5 U.S.C. 552](#), see part 70 of this subtitle) and the "Privacy Act of 1974" ([5 U.S.C. 552a](#), see part 71 of this subtitle).

XI. Appendix 3 – Requesting Additional Wage Determinations

As discussed in Section V, Requesting Additional Wage Determination, herein, the awarded contractor initiates the request for preparing an SF 1444. The prime contractor for the SRF construction contract initiates the conformance request by completing a **Standard Form (SF) 1444 – Request for Authorization of Additional Classification and Rate** (found at the end of this document and at <https://www.gsa.gov/system/files/2023-10/SF1444-23.pdf>).

The following is an overview of the process that the TWDB and its subrecipients are required by EPA and DOL to follow:

1. Prime Contractor completes the SF 1444 and submits the fully executed form, along with the applicable existing DOL Wage Decision for the area, to the subrecipient (such as the City, District, or Water Supply Corporation).
2. Subrecipient reviews and, if it concurs, submits the SF 1444 and existing DOL Wage Decision for the area to the TWDB by emailing a scan of the completed form and Wage Decision to Wages@twdb.texas.gov.
3. TWDB reviews and submits the request to the DOL, along with a copy to EPA.
4. DOL responds to the TWDB with a decision.
5. TWDB informs the subrecipient of DOL's decision to approve, modify or deny the request.
6. Subrecipient incorporates the approved conformance wage determination into the construction contract and awards the contract within 180 days of the conformance issuance date. Copies of the conformance approval should be maintained with Davis-Bacon records.

Questions: Email TWDB at Wages@twdb.texas.gov

Before completing and submitting the SF 1444, please note:

All classes of laborers or mechanics that are not listed in an existing DOL wage determination and that are to be employed under the contract must be classified in conformance with the existing DOL wage determination for the area. Therefore, any additional classification, along with the associated wage rate and fringe benefits, may only be approved by DOL when the following have been met:

- (1) The work to be performed by the classification being requested on the SF 1444 is not performed by a classification that is already in an existing DOL wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates contained in the existing DOL wage determination for the area.

Instructions for boxes on SF 1444:

Check "Construction Contract" at the top of the form

Box 2. Insert the following:

Texas Water Development Board
Austin, TX

Box 3. Prime Contractor's name

Box 4. Date the signed form was emailed to TWDB

Box 5. TWDB's Project Number

Box 6. The date the bid was opened (Bid letting date)

Box 7. The date the contract was awarded.

Box 8. The actual date the contractor will be starting or started work.

Box 9. *Leave blank - this section is not applicable.*

Box 10. List all subcontractors that will utilize the labor classification listed in box 13a. If none, enter "N/A."

Box 11. Project title and description of the project work.

Box 12. Location of project (include city, county and state).

Box 13. The information for "Number" and "Date" are found on the front page of the DOL's General Decision for the area.

Number: Look for the "General Decision Number" (for example: TX180116).

Dated: The date is immediately after the General Decision Number.

Box 13a. List all jobs for which you are requesting a wage (for either the prime or the subcontractor). **Include a detailed job description and duties to be performed. (Note: If the proposed job classification is not one that is commonly used by DOL in their Wage Determination in Texas, such as a “CARPENTER”, “ELECTRICIAN”, or “TRUCK DRIVER”, it is important to include a detailed description with the initial request. The DOL needing to follow up with a request for a detailed job description for a new classification name will delay their review and response significantly.)**

Boxes 13b and 13c. The proposed wage and fringe rates should bear a reasonable likeness to the category classification wage and fringe rates (operator, laborer, truck driver, etc.) listed in the existing DOL wage determination for the area.

Box 14. If there is a subcontractor listed on line 10, its representative signs on this line (include title).

Box 15. The prime contractor's representative must sign on this line (include title).

Box 16. If the prime contractor or subcontractor has a specific employee who will be performing the labor classification(s) listed in box 13a, or if the employees' have legal representation (such as a union), the employee or representative must sign and include their title. (Note: the designated representative of an existing employee cannot be the contractor's personnel office or any other contractor representative.) If no existing employee is known or identified to perform work under the listed classification, then enter "Unknown" in Box 16. The "Agree" or "Disagree" boxes are checked by anyone signing in boxes 14, 15, and 16.