

# Good Faith Effort for Closed Projects

## Compliance with Davis-Bacon and Related Acts



### **Applicability**

This guidance applies to LEAs with closed ESSER-funded projects (e.g., minor remodeling, repairs, construction, etc.) that were subject to the requirements of Davis-Bacon and Related Acts (DBRA) but for which prevailing wages (PWs) may not have been paid by all prime contractors and subcontractors.

CDE has received guidance that DBRA applicability is not dependent on how services were procured. In other words, services performed under a contract, PO, proposal, quote, etc. would all be subject to DBRA if laborers or mechanics performed on federally funded or assisted projects in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. In the case of federally funded equipment, the installation (regardless of its funding source) must be included in the total cost when determining if the \$2,000 threshold was exceeded.

Note, LEAs with open projects must bring them into full compliance with DBRA as quickly as possible and prior to completion of the project.

### **Introduction**

When LEAs identify a closed ESSER-funded project that was subject to DBRA requirements, but it is unclear if laborers and mechanics received PWs, the LEA must:

- Make a good faith effort to ensure PWs were paid during the project.
- Make laborers and mechanics whole (i.e., pay back wages) if PWs were not paid.
- Obtain supporting documentation that PWs were paid.

### **Good Faith Effort**

A good faith effort to determine if PWs were paid should include:

- Contacting contractors and subcontractors via multiple methods as needed to reach them (e.g., phone calls, emails, voice mails, regular mail, etc.).
- Documenting the contact attempts and their results, such as by writing a memo to file (e.g., contractor name, dates contacted, various methods of communication, LEA staff and the people with whom they spoke or left messages, a summary of conversations, the details of any messages or voicemails left, etc.). Other forms of documentation may include a transcript of voicemails with names, titles, dates, and times of attempted calls, copies of text messages to and/or from vendors, or copies of emails requesting PW information or documentation.

A good faith effort to locate laborers and mechanics who did not receive PWs should include:

- Contacting laborers and mechanics using their most recent contact information (e.g., phone calls, emails, voice mails, regular mail, etc.). Note, the LEA could also consider searching for an individual's contact information using online tools.



- Documenting the contact attempts and their results in a memo to file (e.g., laborer or mechanic name, dates contacted, various methods of communication, LEA or contractor staff and the people with whom they spoke or left messages, a summary of conversations, the details of any messages or voicemails left, etc.). Other forms of documentation might include a copy of Google search to find the contractor, documentation of the provider's website no longer existing, returned undeliverable mail, or copies of undeliverable emails.

### **Making Laborers and Mechanics “Whole”**

If it is determined that PWs were not paid, back wages equal to the difference between the PW and the amount actually paid must be paid to laborers and mechanics. While CDE has seen instances of contractors paying back wages on behalf of LEAs, which is acceptable if they offer, it is ultimately the LEA’s responsibility to ensure laborers and mechanics receive the PW.

If an unsuccessful good faith effort has been made to locate laborers and mechanics who did not receive PWs, the LEA could consider paying the back wages to the Colorado Department of the Treasury Unclaimed Property Division.

### **Identifying the Prevailing Wage**

The U.S. Department of Labor (DOL) issues wage determinations (WDs) on [sam.gov](https://sam.gov) to provide the applicable PW amounts. The WDs are issued by locality and by one of four project types. If the WD for a particular project has not already been identified in the related procurement documentation, the LEA can find it on sam.gov by looking for the WD that was 1) in effect at the time the procurement document was signed, and 2) was for the county where the project occurred. This [link](#) provides guidance on how to search for WDs on sam.gov. Note the following when searching sam.gov.

- DOL tends to issue WDs by year but may modify them throughout the year; look for the applicable modification number and date via the History option in the Wage Determination menu to ensure you use the modification in effect at the time the procurement document was signed. Note, the History option is the last menu item shown in the screenshot below.



- Each WD states at the top of the document which WD Number (a.k.a. General Decision Number) it superseded. Use this information to facilitate finding inactive WDs.

"General Decision Number: C020240002 07/19/2024

Superseded General Decision Number: C020230002

- To access inactive (i.e., superseded) WDs by number, identify the WD number as discussed in the bullet above then search for it being sure to check or uncheck applicable checkboxes on the sam.gov screens. Here are two examples:



Status

Active

Inactive

Show active only

### **Supporting Documentation to Demonstrate PW Payment**

In cases where contractors or subcontractors represent that PWs were paid, LEAs should obtain as much documentation as possible to support the representation. Ideally, this would be payroll information showing the same information contractors would have provided had they given the LEA weekly payroll records during the project. Worst case scenario, they would only provide the LEA with a certification on company letterhead that all laborers who worked on the project received PWs.

Note, contractors may use the U.S. Department of Labor (DOL) Form WH-347 to provide LEAs with requested information, but contractors must not be expected to sign the form on an after-the-fact basis.

It is possible LEAs could be randomly selected by the U.S. Department of Education, DOL, or other entity for audit or review. It is best to obtain the strongest support possible to substantiate the claim that either PWs were paid, or the LEA made every effort to ensure they were paid.

### **Additional Information**

Some LEAs have opted to avoid DBRA requirements by submitting a Post Award Revision (PAR) request and moving project expenditures off of ESSER and replacing them with allowable expenditures that were initially recorded in the general fund. Where possible, others have chosen to remove their project expenditures and take indirect costs instead. In some cases, these changes have required a prior period adjustment. Please reach out to your CDE contacts if you wish to explore these types of options to avoid DBRA requirements.