

Conformances Under the Davis-Bacon Act

Government Grant Recipients may submit completed SF 1444 Requests to the Department of Labor via regular mail (address to U.S. Department of Labor, Wage and Hour Division, Government Contract Wage Determinations, 200 Constitution Avenue NW, Washington DC 20210);

OR

Government Grant Recipients may submit completed SF 1444 Requests to the Department of Labor via email. Please scan the completed form and all supporting documents into a 'pdf' file and attach to the email. Include the Government Grant recipient's name, address, telephone, and email address.

Submit the email to: WHD-CBACONFORMANCE_INCOMING@dol.gov

The U.S. Department of Labor (DOL) issues wage determinations under the Davis-Bacon Act (DBA) using available statistical data on prevailing wages and benefits paid in a specific locality. On occasion, the data does not contain sufficient information to issue rates for a particular classification of worker needed in the performance of the contract. Because of this, DBA provisions contain a **conformance procedure** for the purpose of establishing an enforceable wage and benefit rate for the missing classification.

Contractors are responsible for determining the appropriate staffing necessary to perform the contract work. Contractors are also responsible for complying with the minimum wage and benefits requirements for each classification performing work on the contract. If a classification considered necessary by the contractor for performance of the work is not listed on the applicable wage determination, the contractor must initiate a request for approval of an additional classification along with the proposed wage and benefit rates for that classification.

The awarded Contractor initiates the request by preparing an **SF1444**, Request for Authorization of Additional Classification and Rate, at the time of employment of the unlisted classification. (*Reference FAR 22.406-3 and 52.222-6(b), and Title 29 CFR Part 5, Section 5.5(a)*). The contractor completes blocks 2 through 15 on the form. Request may be submitted to DOL without the form, but must contain the required information.

Employees, if present, or their designated representative **must sign block 16** noting their concurrence or disagreement with the contractor's proposed wage and benefit rate. If the employee indicates disagreement with the contractor's proposal, he must provide a statement supporting a recommendation for different rates. ("Designated representative" is generally a union. It cannot be the contractor's personnel officer or other contractor representative.)

The Contractor submits the request to the Government Grant Recipient **Contracting Officer (Contracting Officer)**. The Contracting Officer reviews the request for completeness and signs the form designating the contracting agency's concurrence or

disagreement with regard to the contractor's proposal. If the Contracting Officer indicates disagreement with the contractor's proposal, a statement must be attached supporting a recommendation for different rates. Prior to finalizing the request, **The Contracting Officer should contact the EPA Regional DB Coordinator for guidance and concurrence.** The Contracting Officer then submits the proposal with all attachments to **DOL for approval. A copy of this completed request 'package' shall also sent to the EPA Regional DB Coordinator.** The Contractor is obligated to pay the proposed wage and benefit rates pending a response from DOL.

Checklist for DBA Conformances:

- a. The classification must be appropriate for the contract work, and must be a classification that is utilized in that locality by the construction industry.
- b. The contractor cannot propose a new classification by combining job duties from two or more existing classifications on the wage determination, or propose a new classification that performs only part of the duties of an existing classification.
- c. The proposed classification cannot be a "trainee". Generally, a proposed classification of "helper" will not be approved. Under DBA provisions, a "helper" will not be approved by DOL unless the contractor establishes in his proposal that a "helper" is an established industry area practice.
- d. The proposed wage rate for the new classification should generally be no lower than the wage rate of the lowest skilled classification on the determination.
- e. Conformance requests should not be submitted for exempt classifications (project managers, full-time supervisors, professionals such as engineers), nor for classifications other than "laborers or mechanics" employed on the site of work, as covered by DBA.
- f. The proposed rate should bear a reasonable relationship to the wage rates listed on the wage determination. The proposed fringe benefits should be the same as listed on the wage determination.
- g. The **contractor must** attach a brief job description to each SF1444 request submitted for classifications that are not generally known and utilized in the construction industry in the locality. The contractor should include all pertinent documentation that supports his request for approval of an additional classification.
- h. If the contractor has further questions about a conformance process, he/she may contact the nearest Regional Office of the U. S. Department of Labor, Wage and Hour Division.

When DOL responds to the Contracting Officer, the Contracting Officer provides a copy of the response to the EPA Regional DB Coordinator and to the contractor with instructions to provide each affected employee with a copy or to post it in the work area with the applicable WD. The prime contractor must provide a copy of the determination to subcontractor(s), if any, that may employ workers in the conformed classification under the contract. If DOL responds with an approved rate that is higher than the rate proposed by the contractor, the contractor must pay such rate retroactive to the start of

performance of that craft. The Contracting Officer should **request and retain written confirmation** from the contractor that this liability has been paid in full.

For additional Information please see http://www.wdol.gov/db_confirmnce.aspx