

Business Engagement and Compliance

10 Things to Know about the Recent Updates to Davis-Bacon & Related Acts

On Oct. 23, 2023, the U.S. Department of Labor's latest rule changes and updates took effect related to federal Davis-Bacon and Related Acts (DBRA) policies. These acts govern federally funded prevailing wage projects in Arizona. Not only are federally funded highway projects impacted, but airport projects and federally funded low-income housing projects are also affected.

ADOT recently showcased an overview and impacts via its virtual quarterly Disadvantaged Business Enterprise (DBE) Task Force meeting and follow-up workshop. Both the task force meeting and workshop were recorded, and are available to view on demand.

The DBE Task Force meeting was presented by Estella Robinson, assistant manager for ADOT Construction Field Reports. The DBE Task Force workshop was presented by Cassandra Johnson, president of CLJ Construction Consulting and Patti Olds, CEO of Kuniklo Corporation.

Here are the highlights:

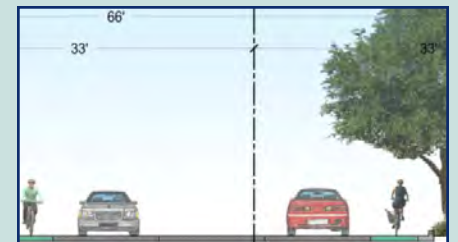
1. Most of the updates and changes codified and recorded things commonly used for ADOT projects. Both the meeting and follow-up workshop detailed items, such as wage determinations for flaggers and how much time spent on site for truckers qualifies as de minimis.



How Getting Stuck In A Traffic Jam Applies To Business Development



Funding Announced for Arizona Amtrak Development



Phoenix 56th Street 'Complete Streets' Overhaul to Start in 2025



Grant will Fund I-17 Wildlife Crossing Project

- ▶ EVENTS
- ▶ OPPORTUNITIES
- ▶ EXTERNAL LINKS

What to look for in contract docs

- FHWA 1273 - Addresses federal requirements, including DBRA
 - Weekly pay and reporting requirements
 - Prevailing wage requirement
 - Recordkeeping
- Wage Decision
 - Type, location, effective date
 - Classification and rates
 - Prevailing practices and rates
- SF-1444 Conformance Requests

NEWLY CERTIFIED DBE FIRMS

- Custom Strategic Solutions LLC

10 Things to Know about the Recent Updates to Davis-Bacon & Related Acts (Cont'd)

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2. Change order work (whether time or added scope) may trigger a new wage determination. This is new with these updates.
3. Multi-county work is now addressed. Many highway projects extend across county lines, but wage determinations were geographically specific to a single county. This update clarifies how to handle projects that cross county lines.
4. The new rule eliminates the strict ban on mixing rural and metropolitan data to enable a wage classification. There is also a way for the wage and hour division to count variable rates that are functionally equivalent in order to make a wage determination. This will reduce the frequency of having insufficient data available to make a wage classification.
5. Cross-withholding is now permissible. If a certified payroll compliance issue was found on a specific project, it is now permissible for the owner to withhold payments on an entirely different project with associated ownership that meets the requirements. For example, if a separate legal entity (joint-venture or wholly owned subsidiary) was formed to build a project that is subject to DBRA, it is now allowable to withhold payment on the parent company's other federally funded projects. This is new.
6. Periodic adjustments to prevailing wages is a new rule. During the task force meeting, Robinson explained that non-union rates have been in place since 2009. With these updates, there is now a mechanism to make periodic updates to prevailing wages, including Indefinite Delivery/ Indefinite Quantity and maintenance contracts.
7. The process for determining the prevailing wage has reverted to the pre-1982, three-step process: over 50% majority prevails. If there is no majority, the rate earned by the greatest number of workers prevails. If no rate is earned by at least 30% of workers, use a weighted average.
8. The new rule clarifies that requirements flow down and responsibility flows up. Contractual obligations, including wage determinations, are included in the prime construction contract. Those provisions flow down to subcontractors and all lower tier subcontractors. When certified payroll comes up from the lowest tier subcontractor, responsibility for the certification of such payroll flows up with it. Everyone in order takes responsibility for the certified payroll documents that come across. Both prime and upper-tier subcontractors are required to pay back wages on behalf of their lower-tier subcontractors.
9. Updates were included to clean up definitions, record-keeping and compliance, including the definition of a contractor vs. a subcontractor, whether demolition is subject to DBRA, and whether flaggers would be subject to DBRA (yes, they are). Records must be kept for three years after all work on the prime contract is complete.
10. The new rule revises the rule to include that employee contact information must be recorded including phone number and email address. Additionally, the new rule codifies the long-standing policy that electronic signatures and electronic-certified payroll submission methods are valid. A valid electronic signature is one that can be authenticated or deemed attributable to that person.

The above list represents an overview of the recent changes and updates. Anyone involved in prevailing wage projects is encouraged to read all the details for a complete view of the changes, and attend training and request guidance where needed. The risks and penalties are high.

Credit: ADOT Construction Field Reports

Resources

- [DBRA Fact Sheet](#)
- [DBRA Comparison Charts](#)
- [DBE Task Force Meeting Recording](#)
- [DBE Task Force Meeting Slide Deck](#)
- [DBE Task Force Workshop Recording](#)
- [DBE Task Force Workshop – At a Glance Definitions](#)
- [DBE Task Force Workshop – Slide Deck](#)

FINAL RULE

Prevailing Wage Rate

Reverts to pre-1982 3 Step Process

- 1) Over 50% majority prevails
- 2) If no majority, then rate earned by the greatest number of workers (at least 30%) prevails
- 3) If no rate earned by at least 30% of workers, use a weighted average

Fringe Benefits

If more than 50% of the workers are not paid fringe benefits then the rate on WD will be zero

If more than more than 50% of the workers are paid fringe benefits, then the rate paid to majority (more than 50%) prevails

If no 1 rate is paid to at least 30%, then WHD will calculate an average of all the paid rates

Area: alternatives for specific circumstance

- 1) Multi-county option for projects in multiple counties. All counties' data will be combined and a single wage rate per classification issued for the project.
- 2) For highway construction State highway districts or similar subdivisions may be used for area units
- 3) Integrates the multi-county option into the regulations for project wage determination

Roadtrip Lessons Learned

How Getting Stuck In A Traffic Jam Applies To Business Development

Business development and rush-hour traffic may seem entirely dissimilar. One is navigating people, procedures, and project needs; and the other is maneuvering streets, interstates and urban thoroughfares. For most design and construction entrepreneurs, both present challenges every day. If we compare the two, we might find some interesting insights to help us reach our destinations quicker and with less stress.

Here are five examples of how business development and rush hour are the same.

- 1. Unpredictability and Delays:** While many of us anticipate the ebb and flow of rush hours, traffic standstills are more unpredictable and both can cause added stress when they cause unexpected delays. Even with GPS and knowing all the alternative routes, sometimes you get caught in an accident slowdown or construction detour. Similarly, in business development, external factors such as market changes, economic conditions or regulatory shifts can introduce uncertainty and disrupt planned strategies, causing unexpected delays in business growth. In both instances, it is wise to allow extra time for unforeseen challenges and be flexible to adapt to uncertain pathways.
- 2. Competitive Bottlenecks:** Just as traffic standstills occur when there is congestion or a bottleneck on the road (even way ahead where you cannot see yet), businesses may face bottlenecks in terms of competition. Intense competition can create stagnation, making it challenging for a company to move forward. In both scenarios, overcoming bottlenecks requires strategic maneuvers and creative solutions.
- 3. Networking and Relationship Building:** Navigating through rush-hour traffic often requires effective networking with other drivers, such as signaling for lane changes or merging. Similarly, business development involves building and leveraging relationships. Successful business development relies on effective networking, partnerships and collaborations to navigate challenges and reach new opportunities. Attending industry events, talking to trusted partners and continuing to expand your industry connections are essential to avoid blind spots and tunnel vision.
- 4. Alternate Routes and Strategies:** Just as drivers may seek alternate routes during traffic standstills to reach their destination faster, businesses must be adaptable and open to exploring alternative strategies. Business development may involve pivoting, diversifying or adopting new approaches to overcome obstacles and capitalize on emerging opportunities. Take a step back and understand the nuances of politics, funding, regulations and technology trends.
- 5. Patience and Persistence:** Rush-hour traffic and business development require patience and persistence. In traffic standstills, drivers need to remain patient until the congestion eases. Avoid shaking your fist, cursing at other drivers or following too closely behind the vehicle in front of you. Similarly, there may be periods of slow progress or setbacks in business development, and companies must pursue their goals and stay committed to long-term success persistently. Find ways to celebrate success, encourage your employees with team-building events and conduct in-house training to keep fresh and energized.

In the hustle and bustle of business development, where the road to success is often fraught with challenges, the analogy to rush-hour traffic standstills proves illuminating. The ability to adapt, navigate uncertainties, build meaningful connections and persist through setbacks are universal skills essential for triumph in both realms. By embracing the lessons learned on congested roads, businesses can find inspiration and guidance in maneuvering through the complex landscape of design and construction, ultimately reaching their desired destinations of growth and prosperity.



Funding Announced for Arizona Amtrak Development

Amtrak and Arizona officials have announced the first \$500,000 for the Arizona Department of Transportation to start planning a passenger rail corridor that would restore service to the Phoenix metro area, running from Tucson into Buckeye.

The planned route would serve eight new stations:

- Marana.
- Coolidge.
- Queen Creek.
- Tempe.
- Phoenix Sky Harbor International Airport.
- Downtown Phoenix.
- Goodyear/Avondale.
- Buckeye.

As the line extends to Los Angeles, Yuma would also see service.

The ultimate goal, according to Amtrak, is three daily round trips between Tucson and Phoenix.

The \$500,000 grant will be used to develop the Arizona project’s scope, schedule and cost estimate, according to a statement from Rep. Greg Stanton, D-Ariz.

Another \$500,000 will be used to fund improvements to the Sunset Limited Line, which runs from New Orleans to Los Angeles and currently includes a stop in Tucson.

Phoenix is the largest city in the country without Amtrak service, having been dropped from the line in June 1996.



Phoenix 56th Street ‘Complete Streets’ Overhaul to Start in 2025

A major overhaul of 56th Street between Thomas and Camelback roads is expected to start construction in 2025.

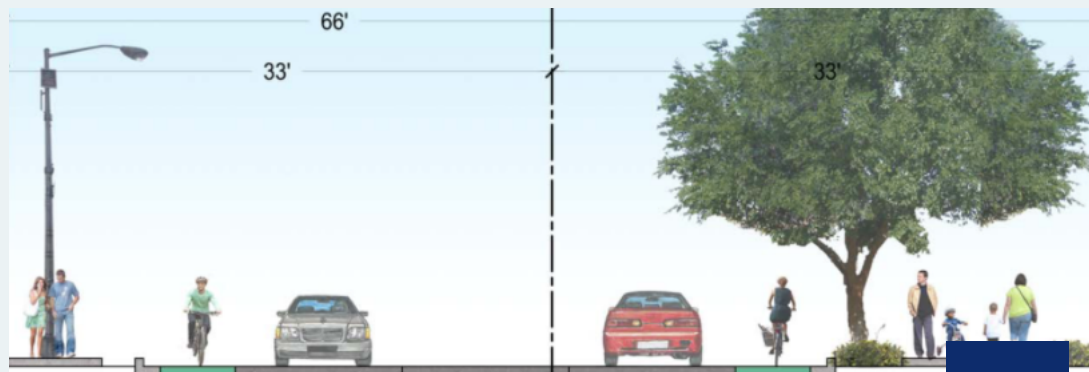
Part of the “Complete Streets” initiative the city of Phoenix adopted in 2017, the 1.5-mile stretch will add new multiuse paths, new landscaping and buffers, and separate the street and paths for added safety in some areas.

The design has not been finalized yet, but the first phase is planned to run from north of Indian School Road to Camelback Road, with the second phase going from Indian School Road south to Thomas Road.

The Phoenix City Council issued advanced approval for staff to buy the necessary land in October. The city is still seeking additional funding from state and federal sources, and final purchase amounts have not been issued. The amount of property the city would need to purchase has been described as “minimal,” but the final specific pieces will not be determined until the design is finalized.

Complete Streets - based overhauls have proven controversial in some areas, but Arcadia neighborhood groups had advocated for safety and additional accessibility changes to 56th Street more than five years ago.

The goal of Complete Streets programs is to improve multimodal transportation and walkability, as well as safety and shade features, to enhance use by not just motor vehicles, but also pedestrians, cyclists, public transit and the disabled. ([Source](#))



Grant will Fund I-17 Wildlife Crossing Project

The Federal Highway Administration has awarded Arizona a \$24 million grant for a wildlife overpass and other improvements designed to reduce crashes involving wildlife and better connect habitats along Interstate 17 south of Flagstaff in northern Arizona.

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Game and Fish Department, sought the grant through FHWA's Wildlife Crossings Pilot Program for improvements along 8.4 miles of I-17 between the Munds Park traffic interchange, about 25 miles south of Flagstaff, and the Kelly Canyon traffic interchange to the north.

The I-17 wildlife project is one of 19 nationally to receive funding through the first round of \$110 million in grants from FHWA.

In addition to the I-17 wildlife overpass, which is planned for milepost 327.4 in the Willard Springs area, the project also will include new eight-foot-tall wildlife fencing tying into existing culverts, ramps to help wildlife escape fenced areas and double cattle guards at interchanges. It will connect with a Game and Fish project that will retrofit wildlife fencing along six miles of I-17 south of Munds Park that directs wildlife to two existing large bridges. The nearly 15 miles covered by these two safety projects accounted for 58% of crashes involving wildlife between 2018 and 2022 between Stoneman Lake Road and Flagstaff. In this 31.7-mile stretch, around three-quarters of all crashes between vehicles and wildlife involve elk, which can weigh up to 1,100 pounds.

The area between Munds Park and Kelly Canyon is one of three priority areas proposed by the state for new wildlife overpasses because of higher potential for collisions involving wildlife, particularly elk and deer. The other interstate freeway locations identified as potential sites for wildlife overpasses are I-17 near the Kachina Boulevard interchange, about six miles south of Flagstaff, and Interstate 40 west of Parks. ADOT and its partners continue to seek funding for projects at the other two priority sites.

Identified by the federal, state and Coconino County governments as a high-priority corridor for elk movement, the 8.4 miles of I-17 through the Willard Springs area currently has no bridges and only one road culvert suitable for use by elk and deer. The wildlife overpass will be 100 feet wide and designed for use by elk, deer, foxes, coyotes, bobcats, black bears, mountain lions and smaller animals.

A projected start date will be determined in the coming months. The project will require completion of final design, including environmental review, project programming and other required steps. This process will be initiated due to the federal grant.

For the project funded by the Federal Highway Administration grant, Game and Fish has committed \$1.5 million in matching funds along with \$750,000 toward project design. Game and Fish also received a \$1 million America the Beautiful Challenge grant from the National Fish and Wildlife Foundation that, along with \$387,000 in matching funds, will be used for the fence retrofit along I-17 south from Munds Park. ([Source](#))



Business Engagement and Compliance

- ADOT/BECO
- Other Associations

****ATTENTION TO ALL FIRMS****

Need help preparing DBE affidavits?
Please see our tutorial video below:

["Preparing DBE Affidavits"](#)



DECEMBER

26 **AZAEP: Monthly Member Meeting**
6 - 8 p.m.
Location: Virtual

JANUARY

16 **AZCREW: What's Happening in Arizona's Industrial Market**
11:30 a.m. - 1 p.m.
Location: ASU SkySong Building 3
1365 N. Scottsdale Road, Scottsdale

18 **IFMA: 52nd St. Clean Up**
4 - 6 p.m.
Location: Orangedale Early Learning Center
5048 E. Oak St., Phoenix

18 **AZ Water Association: So. Arizona Technical Luncheon & Webinar - CAP Update**
11:30 a.m.
Location: Water Campus
2955 W. Calle Agua Nueva, Tucson

19 **AAED: 2024 Cornhole Tournament**
11 a.m. - 3 p.m.
Location: Hole 9 Yards
868 N. Gilbert Road Ste. 105, Gilbert

24 **ASA AZ: Attorney's Council: How to Navigate Construction Defect Claims**
7:30 - 9 a.m.
Location: ASA AZ Office
4105 N. 20th St. Ste. 230, Phoenix



Featured Federal-Aid Projects

CURRENT OPEN SOLICITATIONS

Due Date	Project Valuation	DBE Goal	Solicitation / Project Number	Type	Project Owner and Description	Contact
1/05/24 11:00 a.m. MST	\$747,000	3.65%	089-B(220)T; F051901C	IFB	ADOT - Install Rumble Strips Prescott Ash Fork Highway (SR 89) from MP 339 to I-40, Yavapai County. The work consists of installing centerline rumble strips, fog coat, permanent pavement markings and other related work.	Iqbal Hossain, Group Manager of Contracts and Specifications, at ihossain@azdot.gov .
1/19/24 11:00 a.m. MST	\$2.52 million	1.63%	040-B(232)T; F037101C	IFB	ADOT - Ash Fork Creek Bridges, Kingman to Ash Fork Highway (I-40). The work consists of scour retrofit that will be performed on the Ash Fork Creek bridges.	Iqbal Hossain, Group Manager of Contracts and Specifications, at ihossain@azdot.gov .
1/19/24 11:00 a.m. MST	\$1.19 million	4.57%	T028501C; CLF-0(202)T	IFB	ADOT - System Preservation and Bridge Replacement, Chase Creek Bridge, Clifton. The work consists of a new bridge, realigning the Frisco Avenue, constructing the bridge approaches, and other related work.	Iqbal Hossain, Group Manager of Contracts and Specifications, at ihossain@azdot.gov .
1/19/24 11:00 a.m. MST	\$15.56 million	4.94%	F049501C; 017-A(261)T	IFB	ADOT - Pavement Rehabilitation, Cordes Junction Highway (I-17) to Happy Valley Road (SR 74), Phoenix. The work consists of milling one inch of the existing pavement on I-17, repairing Portland Cement Concrete Pavement, diamond grinding the surface of existing PCCP, and milling one inch of the existing pavement on ramps and the shoulders. In addition, the work includes; bridge repairs, pavement markings and other related work.	Iqbal Hossain, Group Manager of Contracts and Specifications, at ihossain@azdot.gov .

External Links:

- [ADOT Current Advertisements](#)
- [ADOT Engineering Advertisements](#)
- [ADOT Public-Private Partnership Initiatives](#)
- [ADOT Advertised Alternative Delivery Projects](#)
- [Bidding Opportunities Around the State](#)

DBE SUPPORTIVE SERVICES PROGRAM

1801 W. Jefferson St., Ste. 101, Phoenix AZ

602.712.7761

DBESupportiveServices@azdot.gov

I-17, ANTHEM WAY TI TO JCT. SR 69 (CORDES JUNCTION)



PROJECT OWNER

Arizona Department of Transportation

PROJECT NAME

I-17, Anthem Way TI to Jct. SR 69
(Cordes Junction)

Phoenix – Cordes Junction Highway

Public-Private Partnership
Design-Build-Operate-Maintain
Agreement

PROJECT NUMBER

17 MA 229 H6800 01C / NHPP-017-
A(228)S

DBE participation goal
established for this project:

10.16%
for Professional Services

10.88%
for Construction Work

OUR TEAM

The Kiewit-Fann Joint Venture (KFJV) is a strategic partnership between two trusted Arizona firms that have extensive experience working in rural environments, delivering highway projects. KFJV team members have an extensive history together on successful design-build and CMAR projects and have long-standing relationships with ADOT, local jurisdictions, and the community.

POTENTIAL SUBCONTRACT OPPORTUNITIES

KFJV is seeking diverse and local firms interested in pursuing multiple scopes of work on the I-17 Anthem Way project. The following scopes are open for solicitation:

- Buy PVC & CIP Wall Embeds
- De-lead Existing Bridge Bearings
- Handrail
- Bridge Deck Grooving
- Nursery Stock Trees
- Rock Bolt Walls
- Install Rock Anchors/Shotcrete
- Remove Ground Mounted Signs
- Routine Maintenance - Damaged Sign F&I
- Weld Bearing Replacements
- Slipform & CIP Concrete Barrier
- Flatwork

Attachments: Wage Decision No. AZ20210008 Mod No. 0 - Dated 01/01/2021

TAKE THE FIRST STEPS

Head to <https://www.kiewit.com/business-with-us/opportunities/i-17-anthem-way-project/> to complete the Subcontractor Questionnaire and create an account with Building Connected, or for additional information and future event dates.

QUESTIONS? CONTACT US!

Contact us to learn about anticipated subcontract opportunities on the I-17 Anthem Way project at Flex.Outreach@kiewit.com.

KFJV is committed to meeting or exceeding stated project participation requirements upon award of ongoing and upcoming Arizona Department of Transportation projects; assisting interested DBEs in obtaining bonding, lines of credit or insurance; providing interested DBEs information related to the plans, specifications and requirements for work to be subcontracted or supplied by these DBEs; assisting interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services; sub-dividing bid items into economically feasible work units to DBEs every advantage to quoting the project.

KFJV is an Equal Opportunity Employer.