The Davis-Bacon Act

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Agenda

• Background & Requirements
• Compliance Principles
• Roles and Responsibilities
Background

• Enacted in 1931 and amended in 1935 & 1964.
• Applies to Federal construction contracts over $2,000.
• The Act is “site-based”.
• Covers alteration, repair, painting & decorating activities.
Davis-Bacon Act (DBA) Requirements

- Payment of locally “prevailing wages” and “fringe benefits” to laborers and mechanics, as determined by the U.S. Department of Labor (DOL)

- Applies to direct Federal and District of Columbia contracts

- Applies to “laborers” and “mechanics” of contractors and subcontractors

- Performing work on the “site of the work”

- Must be paid not less often than weekly

- Wage scale must be posted at the job site
DBA Construction Types

- **Residential** – houses, townhouses, and apartments up to 4 stories
- **Building** – most other structures and apartments over 4 stories
- **Highway** - roadways, sidewalks, parking areas, etc.
- **Heavy** - other projects, generally public works

- Most FRA grants will be classified as either **Heavy** or **Highway**.
Wage Determinations

- Available at [http://www.wdol.gov](http://www.wdol.gov) Wage Determinations online

- Specific to geographic area (county or a group of counties)

- Specific to 4 types of construction: Residential, Building, Highway, Heavy

- Modified periodically

- Include in bid documents and contract for construction

- If wage determinations are uncertain, contact either the grant manager or the Davis-Bacon Legal Aid.
Compliance Principles

The Davis-Bacon Act (DBA) & Davis-Bacon Related Act (DBRA)
Davis Bacon Act & Davis Bacon Related Acts (DBRA) Compliance Principles

- Laborers and mechanics
- Site of the work
- Apprentices Trainees & Helpers
- Fringe Benefits
- Federal contracts: Public Contracts Act (PCA) interaction with DBA
- Computing overtime pay
Laborers and Mechanics

- Defined as workers whose duties are manual or physical in nature.
- Includes Apprentices, Trainees and Helpers
- Job types not covered:
  - Supervisory position at the job site (<20% time in skilled labor)
  - Clerical
  - Professionals
  - Volunteers
Site of the Work

• Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work.”

• Site of the work is:
  • Physical place remediation occurs
  • Other site where significant portion of remediation occurs
Apprentices, Trainees, and Helpers

Apprentices and Trainees
• Are laborers and mechanics, but are not listed on the WD
• Permitted to be used on covered projects and paid less than the journeyman rate when:
  • Individually registered in an approved apprenticeship or training program
  • Paid the percentage of hourly rate required by the apprenticeship or training program
  • Paid the FB’s specified in the approved program, or the full amount of FB’s listed on the WD, if the program is silent; and,
  • Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen

Helpers
• May be employed if:
  • Duties are clearly defined and distinct from other classifications on the WD
  • An established prevailing practice in the area,
  • Not employed in an informal training program
  • May be added to WD if all above conditions are met; no WD class performs the work
Fringe Benefits

- Under DBA, FB’s are a component “prevailing wage”

- The WD obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two

- Must be paid weekly for all hours worked

- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)

- Types of FB: Life insurance, health insurance, pension, vacation, holiday, sick leave, etc.

Example

- BHR $10.00
- FB $1.00
- Total prevailing wage $11.00

- The contractor may comply by paying:
  - $11.00 in cash wages
  - $10.00 in cash wages plus $1.00 for FB
  - $9.00 in cash wages plus $2.00 for FB
INTERACTION AMONG GOVERNMENT CONTRACTS LAWS

• Federal contracts requiring PCA & DBA
  • PCA covered contract has more than incidental amount of construction work
  • DBA applies to construction work
  • Construction includes
    “construction, alteration and repair, including painting and decorating”
• See FAR 48 C.F.R. § 22.402(b).
Computing Overtime Pay
Contract Work Hours & Safety Standards Act (CWHSSA) Earnings

An employee worked 44 hours as electrician, where WD BHR is $12.00 plus $2.50 in FB’s:

\[
\begin{align*}
44 \text{ hours} \times \$2.50 &= \$110.00 \text{ FB’s} \\
44 \text{ hours} \times \$12.00 &= \$528.00 \text{ BHR} \\
4 \text{ hours} \times \$12.00/2 &= \$24.00 \text{ OT} \\
\text{Total} &= \$662.00
\end{align*}
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Roles and Responsibilities

The Davis-Bacon Act
Federal Government Role

- **FRA** - Responsible for enforcement of Davis-Bacon and Davis-Bacon related acts.

- **DOL** – Establishes regulations and investigates compliance.
Recipient Role

• Conduct onsite interviews with laborers and mechanics
  • Within 2 weeks of initial and final payrolls.

• Conduct spot-check payrolls/related records
  • Within 2 weeks of initial and final payrolls.

• Report potential violations.

• Maintain full documentation (3 years).

• Grant recipients may request exceptions to the frequency of payroll spot checks and interviews.
FRA Responsibilities

• Ensure proper wage determination (WD) is applied
• Advise contractors which schedule of rates applies to various construction items
• Advise contractors regarding the duties performed by various crafts in the WD
Useful Information

The Davis-Bacon Act
Internet Sites

• Wage Determinations – http://www.wdol.gov
• Wage and Hour Division – http://www.dol.gov/whd
• Administrative Review Board – http://www.dol.gov/arb
• Debarred Bidders List – http://www.epls.gov
• FRA – http://www.fra.dot.gov
Thank you!

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