The Davis-Bacon Act and Brownfields



Introduction

By their design, EPA Brownfields grants depend upon the efforts of a wide range of participants, including public- and private-sector entities who finance transformation of brownfields sites, as well as the individual workers and laborers on the front lines of cleanup and redevelopment. The U.S. government has laws in place to ensure that any worker involved in a federally-funded public works project is compensated in a fair and timely manner. This legislation, known as the Davis-Bacon Act, applies to EPA-funded brownfields cleanup activities and projects funded under EPA Brownfields Cleanup and Revolving Loan Fund (RLF) grants.

Background on the Davis-Bacon Act

The Davis-Bacon Act was enacted in 1931 in response to the rampant unemployment of the depression era. At the time, the primary intent of the Act was to promote the hiring of skilled, local workers, by discouraging the import of laborers from other regions who would work for lower wages.

Since its enactment, Davis-Bacon has been amended three times, in 1935, 1964, and 1994. The Act was briefly suspended twice—in 1992 and 2005—to facilitate emergency response activities following Hurricanes Andrew and Katrina. The Act is administered and enforced by the Wage and Hour Division of the Employment Standards Administration, which falls under the U.S. Department of Labor (DOL).

<u>How Davis-Bacon Applies to Brownfields Grants Funded</u> <u>Through the American Recovery and Reinvestment Act</u>

It should be noted that the same Davis-Bacon requirements apply to Brownfields Cleanup and RLF grants funded through the American Recovery and Reinvestment Act. There are no differences as to how Davis-Bacon requirements should be met for such grants.

Overview of the Act

The Davis-Bacon Act applies to EPA Brownfields grants by way of section 104(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), under which:

"...all laborers and mechanics employed by contractors or subcontractors employed in the performance of construction, alteration, or repair work funded in whole or in part [by Brownfields grants] shall be paid locally prevailing wages."

These locally prevailing wage rates are determined by the U.S. Department of Labor, and can be accessed in a searchable database at the following address: http://www.access.gpo.gov/davisbacon/.

The Act covers all contractors and subcontractors performing work on federally-funded or -assisted construction contracts in excess of \$2,000. While apprentices and trainees may be employed at less than predetermined rates, apprentices must be employed pursuant to an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department.

How Does the Act Apply to Brownfields Projects?

The Davis-Bacon Act applies to all construction, alteration, and repair (including painting and decorating) contracts and sub-contracts awarded with EPA grant funds. For cleanup activities funded through EPA Brownfields Cleanup and Revolving Loan Fund grants, recent and applicable wage rates from the U.S. Department of Labor must be incorporated into construction, alteration, and repair (including painting and decorating) solicitation and contracts.

How Davis-Bacon Applies to Cleanup of Petroleum-Contaminated Brownfields

Some cleanup activities at sites contaminated by petroleum are not subject to Davis-Bacon Act requirements. Such activities include site remediation through drilling temporary



Workers clean up petroleum at a brownfields site in Prineville, Oregon.

recovery wells, drawing out contaminated soil or water, treating the contaminated soil/water on site, removing the treatment technology and closing recovery wells, and restoration of the area surrounding tank removal that involves only filling and compaction of soil. However, the Davis-Bacon Act does apply to the following petroleum-related cleanup activities:

- Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination.
- Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above.
- Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

Note: if a Brownfields grant recipient is uncertain about whether a cleanup activity falls under Davis-Bacon Act requirements, the recipient should discuss the situation with EPA before authorizing work on the site.

In specific legal terms, "the recipient must ensure that solicitations and contracts contain the clauses required by 29 CFR 5.5 and any applicable EPA guidance." Please note that EPA and the U.S. Department of Labor are responsible for overseeing Brownfields grantees' compliance with Davis-Bacon Act requirements, and EPA Regional project managers are available to assist grantees (and in the case of RLFs, subgrant recipients) in this regard.

RLF grantees may require that RLF borrowers and/or subgrantees perform portions of the Davis-Bacon Act requirements identified in the flow chart below.

EPA Brownfields Cleanup cooperative agreement awarded or for RLF cooperative agreements, a site has been identified and a loan or subgrant is in progress.

Recipient obtains prevailing Wage Determination (WD) for the locality the cleanup will occur in from the Department of Labor (DOL) Web site. http://www.wdol.gov For Non-Profit Cleanup Recipients Only

Non-Profit Cleanup grant recipients must submit the proposed WD to the EPA Davis-Bacon Point of Contact (POC) listed in their cooperative agreement Terms and Conditions (T&Cs).

The EPA Davis-Bacon POC must verify the WD prior to the non-profit recipient placing the WD in any solicitations.

If the WD does not include a labor category to be employed under the contract, the recipient shall submit information regarding the proposed classification and wage rates for that labor category to the EPA Award Official. The EPA Award Official will submit the request to DOL for authorization of the classification and wage rate and will notify the recipient of the appropriate classification and wage rate to use in their executed contract(s). Recipients must ensure the correct WDs for the locality the cleanup will take place in are included in all prime contract solicitations for construction, alteration, or repair (including painting and decorating) as interpreted by the T&Cs of their Brownfields grants that are funded all, or in part, with EPA funds.

Note: RLF recipients must ensure that prevailing WDs are included in borrower and subgrantee solicitations for prime contracts. Unlike subgrantees, EPA's grant regulations do not require that borrowers award prime contracts competitively, although such a requirement may be imposed by state or local law.

Recipients must ensure all executed prime contracts and subtracts for construction, alteration, or repair (including painting and decorating) as interpreted by the T&Cs of their Brownfields grants funded all, or in part, through the grant, loan or subgrant, specify that wages must meet the locally prevailing wage rates in effect at the time the contract is executed. Recipients must also ensure that the contracts and subcontracts contain the Davis-Bacon clauses provided in EPA's Davis-Bacon T&Cs.

Note: RLF recipients must ensure that prevailing wage rates are included in all borrower and subgrantee contracts and subcontracts. RLF recipients must also ensure that the contracts and subcontracts contain the Davis-Bacon clauses provided in EPA's Davis-Bacon T&C.

Download DOL's Employee Fair Compensation Notice. This notice must be posted at the work site, along with a list of locally prevailing wage rates. DOL Site Notice [Poster] Regarding Fair Compensation: http://www.dol.gov/esa/whd/regs/

compliance/posters/fedprojc.pdf

Contractor submits payroll information and "Statement of Compliance" regarding payment of Davis-Bacon wages on a weekly basis to the recipient.

DOL Payroll Form WH-347: http://www.dol.gov/esa/whd/form s/wh347.pdf

Recipients must immediately report, or require borrowers or subgrantees to immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon POC identified in their T&Cs and to the appropriate DOL Wage and Hour District Office listed at:

http://www.dol.gov/esa/whd/america2.htm.

Compare payroll records to employee interviews to confirm and document compliance with Davis-Bacon requirements.

Note: Recipients are required to maintain a copy of the completed WH-347 and employee interviews as part of the cooperative agreement file and be able to provide a copy of the payroll verification to EPA upon request.

Perform on-site verification/ interviews with workers entitled to Davis-Bacon wages.

GSA Standard Form 1445:

http://contacts.gsa.gov/webforms.nsf/0/1 2BF5D0E2DC4484685256CBC0062F375/\$ file/sf1445_e.pdf

For more detailed information, including copies of explanatory brochures and regulatory and interpretative materials, please refer to the links below or contact your local Wage and Hour Division office (a list of local Wage and Hour Division offices is available at http://www.dol.gov/esa/whd/america2.htm). A Wage and Hour Division help line is also available at 1-866-4US-WAGE (487-9243).

Related Links

Davis-Bacon and Related Acts Home Page at the U.S. Department of Labor http://www.dol.gov/esa/whd/programs/dbra/index.htm

Davis-Bacon Act Compliance Guide

(U.S. Department of Labor's Office of Compliance Assistance Policy) http://www.dol.gov/compliance/quide/dbra.htm

Additional Davis-Bacon Wage Determination Reference Material http://www.access.gpo.gov/davisbacon/referencemat.html



Brownfields cleanup in Boston, Massachusetts.

Contact Information

EPA's Office of Brownfields and Land Revitalization (OBLR) http://www.epa.gov/brownfields • (202) 566-2777

