

NJIT TAB & USEPA RLF Workshop October 13 & 14, 2010



Review & Compliance with
Davis-Bacon Act



Topics

- Background
- Davis Bacon Related Acts
- Cleanup Activities Subject to DBA
- Petroleum Cleanups
- Laborers and Mechanics
- Site of the Work
- Davis Bacon Process
- Federal, RLF Recipient & Borrower/Subgrantee Roles
- Common Violations
- Contractor /Subcontractor Roles
- Jobsite Postings, Forms & Interviews
- Resources



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.
- Applies to laborers & mechanics.
- Requires payment of prevailing wages.
- Requires weekly payment of wages.



Davis-Bacon Related Acts

- Davis-Bacon requirements extend to numerous “Related Acts” that provide federal assistance:
 - ✓ Grants/Cooperative Agreements
 - ✓ Loans
 - ✓ Loan guarantees
 - ✓ Insurance





Cleanup Activities Subject to DBA

- Excavation of Contaminated Soils
- Construction of Caps and Barriers
- Construction of structures to house treatment equipment
- Abatement of Contamination in Buildings (Some Exceptions)
- Demolition (if followed by new construction)
- Installing Water Supply Wells/Piping/Connections



Petroleum Cleanups

- Unless followed by paving or concrete replacement, the following petroleum cleanup actions generally don't trigger DBA:
 - ✓ Tank removal
 - ✓ In situ remediation
 - ✓ Soil excavation/replacement
 - ✓ Site assessment activities





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:
 - ✓ Your Brownfields site
 - ✓ Physical place remediation occurs
 - ✓ Other site where significant portion of remediation occurs, when established specifically for the contract.
 - ✓ Job HQ, tool yards, batch plants, borrow pits, etc., if they are:
 - Located adjacent or virtually adjacent to the “site of work” and dedicated exclusively or nearly so to the performance of the contract or project.



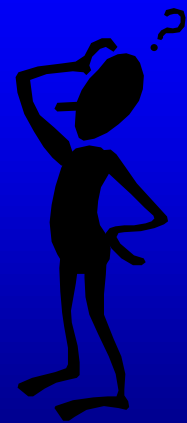
Davis-Bacon Process

- Cleanup Planning - Prevent labor and budget problems, set up protocols to ensure compliance
- Cleanup Period - Follow posting, payroll, and monitoring protocols
- Post Cleanup - Document payroll and certifications, and retain records



Planning Step #1

- Refer to the terms and conditions of your cooperative agreement.
- Identify if DBA applies to your remediation tasks.
- Remember that the Davis-Bacon Act is “site-based”
- Identify the project State and County





Planning Step #2

- Obtain Wage Determinations – Available at <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
- For Non-Government subgrantee (non-profits), EPA DBA contact must concur on wage determination.





Planning Step #3

- 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
 - Examples include dredging, water/sewer lines, parks and playgrounds, dams, major bridges, and flood control.
- Most Brownfields cleanups will be classified as “Heavy” except for asbestos or lead paint removal which would most likely be classified as “Building”.



Planning Step #4

- Verify prime contractor and all subcontractor eligibility against GSA Debarment List.
- On-line access at: <http://epls.arnet.gov>.
- Make record of verification to contract file.
- Bid/contract documents (including RFPs) must contain:
 - ✓ Applicable Davis-Bacon Wage Determination
 - ✓ Federal labor standards clauses



Wage Determination “Lock-In”

- Competitive bidding: Modifications published less than 10 days before bid opening may be disregarded if insufficient time to notify bidders, and a report is made to contract file.
- Lock-in at bid opening provided contract is awarded within 90 days.
- Must update wage determination if contract award is more than 90 days after bid opening.
- Once a Davis-Bacon wage rate has been “locked,” it stays in effect for the duration of the project.



Federal Government Role

- EPA - Responsible for enforcement of Davis-Bacon and Davis-Bacon related acts for your RLF.
- DOL – Establishes regulations and investigates compliance.



RLF Recipient Role

- Obtain wage determinations from DOL.
- Ensure all bid/contract documents contain wage determination and labor provisions (prime and subcontractors).
- Ensure no contracts are awarded to ineligible contractors.
- Ensure submission of certified payrolls.



RLF 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.
- Periodically review use of apprentices and trainees.
- Report potential violations.
- Maintain full documentation (3 years).
- Grant recipients may request exceptions to the frequency of payroll spot checks and interviews.



Contractor/Subcontractor Role

- Each contract subject to Davis-Bacon must contain labor standards and the applicable wage determination.
- Labor standards describe contractor responsibilities.
- Labor standards provide remedies for noncompliance.
- Labor standards are included as part of the terms and conditions of the cooperative agreement.



Prime Contractor Role

- Prepares and submits certified payrolls for its own employees.
- Submits certified payrolls for all subcontractor employees.
- Reviews wage determination and requests additional classifications when needed.
- Provides subcontractors with forms and guidance concerning Davis-Bacon requirements.
- Provides Davis-Bacon Poster and interviewer confidential access to employees on site.
- Instructs lower-tier subcontractors of their responsibilities.



Subcontractor Role

- Prepares & submits certified payrolls each week for its own employees.
- Instructs any lower-tier subcontractors of responsibilities.
- Reviews wage determination and requests additional classifications if needed.
- Provides Davis-Bacon Poster and interviewer confidential access to employees on-site.



If Federal and State Wages Apply

- Contract must contain both Federal and State wage decisions/contract standards.
- Employers must pay higher of two rates.
- Payrolls must carry Federal statement of compliance (reverse of payroll form WH-347).





Job Site Postings

- Notice to All Employees (WH1321)
- Protected from elements
- Accessible to all laborers and mechanics
- Easy for all parties to see

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321 (Revised April 2009)



Job Site Postings

- Davis-Bacon wage decision **OR** Project Wage Rate Sheet
- Protected from elements
- Accessible to all laborers and mechanics
- Easy for all parties to see
- Prepared after wage decision locked in

[illegible]



- [illegible]



Interviews



LABOR STANDARDS INTERVIEW			
CONTRACT NUMBER		EMPLOYEE INFORMATION	
NAME OF PRIME CONTRACTOR		LAST NAME	FIRST NAME MI
NAME OF EMPLOYER		STREET ADDRESS	
SUPERVISOR'S NAME		CITY	STATE ZIP CODE
LAST NAME	FIRST NAME MI	WORK CLASSIFICATION	WAGE RATE
ACTION			CHECK BELOW
			YES NO
Do you work over 8 hours per day?			
Do you work over 40 hours per week?			
Are you paid at least time and a half for overtime hours?			
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?			
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?			
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?		TOOLS YOU USE	
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)			
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)			
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE			
EMPLOYEE'S SIGNATURE			DATE (YYMMDD)
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE (YYMMDD)
INTERVIEWER'S COMMENTS			
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED		ACTION (If explanation is needed, use comments section)	YES NO
		IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?	
		ARE WAGE RATES AND POSTERS DISPLAYED?	
FOR USE BY PAYROLL CHECKER			
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?			
<input type="checkbox"/> YES <input type="checkbox"/> NO			
COMMENTS			
CHECKER			
LAST NAME	FIRST NAME	MI	JOB TITLE
SIGNATURE			DATE (YYMMDD)
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable			
STANDARD FORM 1445 (REV. 12-96) Prescribed by GSA - FAR (48 CFR) 53.222(g)			



Common Violations

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime).
- Inadequate recordkeeping.
- Improper documentation of apprenticeship program.
- Failure to submit certified weekly payrolls.
- Failure to post the Davis-Bacon poster and applicable wage determination.



Additional Information

- EPA Davis-Bacon Regional Coordinators:

✓ Region 1 - Ms. Pat Oleary	617-918-1978	oleary.pat@epa.gov
✓ Region 2 - Mr. Anthony Tao	212-637-3372	tao.anthony@epa.gov
✓ Region 3 - Ms. Lorraine Fleury	215-814-2341	fleury.lorraine@epa.gov
✓ Region 4 - Ms. Dorothy Rayfield	404-562-9278	rayfield.dorothy@epa.gov
✓ Region 5 - Ms. Darlene Hainer	312-886-6017	hainer.darlene@epa.gov
✓ Region 6 - Ms. Mary Kemp	214-665-8358	kemp.mary@epa.gov
✓ Region 7 - Ms. Lee A. Thomas	913-551-7739	thomas.leea@epa.gov
✓ Region 8 - Ms. Joyce Brame	303-312-6367	brame.joyce@epa.gov
✓ Region 9 - Mr. Joe Ochab	415-972-3761	ochab.joe@epa.gov
✓ Region 10 - Mr. Bob Phillips	206-553-6367	phillips.bob@epa.gov
✓ Headquarters - Mr. Sam Peterson	202-564-5393	peterson.samuel@epa.gov
✓ Brownfields Program - Debi Morey	202-566-2735	morey.debi@epa.gov



Additional Resources

- EPA ARRA Administrative and Davis-Bacon Cooperative Agreement Terms and Conditions > www.epa.gov/ogd/tc.htm
- DOL Davis-Bacon Fact Sheet > <http://www.dol.gov/esa/whd/regs/compliance/whdfs66.pdf>
- General Davis-Bacon Act requirements and applicability > [Compliance Assistance By Law - The Davis-Bacon and Related Acts \(DBRA\)](#)
- Wage determinations on line > <http://www.wdol.gov/>
- Selecting the appropriate construction type (Section 4b) > <http://www.wdol.gov/usrguide/sectionc.aspx#c4b>
<http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>



Additional Resources

- Selecting a wage determination > <http://www.wdol.gov/dba.aspx#0>
- Wage rate posting requirements > <http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>
- Performing a review of certified payrolls > <http://www.dol.gov/esa/whd/forms/wh347.pdf>
- Conducting labor interviews > [http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/\\$file/sf1445.pdf](http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/$file/sf1445.pdf)
- Recommendations for resolving wage rate violations. DOL employment law guide > <http://www.dol.gov/compliance/guide/dbra.htm>



Additional Resources

- Davis-Bacon Reference Material >
<http://www.gpo.gov/davisbacon/referencemat.html>
- Prevailing Wage Resource Book >
<http://www.dol.gov/esa/whd/recovery/pwrb/toc.htm>
- DOL wage and hour division offices >
[U.S. Department of Labor — Employment Standards Administration \(ESA\) — Wage and Hour Division \(WHD\) — District Office Locations](#)
- DOL wage and Hour Division ARRA website >
<http://www.dol.gov/esa/whd/recovery/>



Questions?

