

2015 FRA Rail Program Delivery



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> 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

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:

| | | | | | |
|----------|---|-----------|---|----------|------|
| 44 hours | X | \$ 2.50 | = | \$110.00 | FB's |
| 44 hours | X | \$12.00 | = | \$528.00 | BHR |
| 4 hours | X | \$12.00/2 | = | \$ 24.00 | OT |
| | | | | <hr/> | |
| | | | | \$662.00 | |

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>
- Office of the Administrative Law Judges Law Library – <http://www.oalj.dol.gov>
- 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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