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

- 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.
• **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.
- 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
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
Certified Payroll

- Optional form WH 347, Payroll
- Compliance statement (w/original signature of corporate official or designee)
- Payrolls required weekly
- Identify first and final payroll
- Prime contractor reviews prior to submission
- Payroll retention = 3 years
Interviews

LABOR STANDARDS INTERVIEW

CONTACT NUMBER

NAME OF PERSON CONDUCTING

NAME OF CONTRACTOR

FIRM NAME

FIRM NUMBER

NAME OF EMPLOYER

MAIL ADDRESS

LAST NAME

FIRST NAME

DATE

ACTIVITY

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?

SUPPORTING INFORMATION OTHER THAN TAXES AND SOCIAL SECURITY AND SICU MESS THE PROPER INFORMATION?

ANY OTHER INFO ID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?

DATE OF LAST SICK OR INJURY (Y/M/D)

DATE YOU BEGAN WORK ON THIS PROJECT (Y/M/D)

THE ABOVE IS SUBJECT TO THE RUST OF MY KNOWLEDGE

INPUTER'S IDENTIFICATION

DATE (Y/M/D)

INTERVIEWER'S IDENTIFICATION

DATE (Y/M/D)

INTERVIEWER'S COMMENTS

WORKER EXAMINED HAD DOLT ON INTERVIEW

ARE PAY RATES AND POSTERS DISPLAYED?

ARE EMPLOYEES PROPERLY CLASSIFIED AND PAID?

FOR USE BY PAYROLL CHECKER

TO OVERRIDE INFORMATION IN COMPLIANCE WITH PAYROLL DATA

Comments

LAST NAME

FIRST NAME

FILE NUMBER

JOB TITLE

SIGNATURE

DATE (Y/M/D)

STANDARD FORM 1100A REV. 12/20

Produced by: DCPA - PRIV (12/08) 86 (2011)
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.
• 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
- 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
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

• 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?