



Labor Standards Administration and Enforcement

2018 CDBG-DR Problem Solving Clinic

Atlanta, GA | December 12-14, 2018

Welcome & Speakers

- Session Objectives
 - Explain the importance of Davis Bacon Labor Standards and their applicability
 - How to determine contractor eligibility
 - Provide guidance on how to follow and document compliance with Davis Bacon Labor Standards
- Speaker
 - Leslie Gibson, HUD



Agenda

- Labor standards overview
- The Related Acts: WHY we do what we do
- Wage Decisions & Classification Issues
- Compliance Principles
- Certified Weekly Payroll Reports



Davis Bacon Labor Standards Overview and Responsibilities



Davis Bacon Labor Standards (DBLS) Responsibilities

- Directly administers & enforces federal labor standards for multifamily HUD-insured projects across the U.S.
- Oversight of the administration & enforcement of federal labor standards conducted by local contracting agencies (LCAs)
- Apply prevailing wage requirements properly
- Support contractor compliance
- Monitor contractor performance
- Investigate probable violations
- Pursue appropriate sanctions when warranted



Agency Responsibilities

Administrative

- Designate appropriate enforcement staff
- Establish construction contract management system
- Ensure that bid docs, contracts, & subcontracts contain:
 - Federal labor standards clauses
 - Applicable wage decision
- Verify contractor eligibility

Enforcement

- Conduct on-site employee interviews with laborers & mechanics; comply with posting requirements
- Review certified weekly payrolls
- Ensure compliance with requirements
- Maintain full documentation of actions

Admin & Enforce

- Refer investigations to HUD
- Submit required reports



The Related Acts: WHY We Do What We Do



The Related Acts

- **PUBLIC HOUSING**

- U.S. Housing Act of 1937, Sec. 12(a)

- **CDBG (EDI/BEDI/Section 108)**

- Housing and Community Development Act of 1974, Sec. 110(a)

- **HOME**

- National Affordable Housing Act of 1990, Sec. 286(a)



First Determine Applicability

- PHA
- CDBG/CDBG-DR
- HOME
- NSP 1 & II
- TCAP



CDBG Applicability

- “All laborers and mechanics employed . . on construction work financed in whole or in part . . . shall be paid [prevailing wage rates].”
Section 110a of the HCDA of 1974
- Construction work over \$2,000
- Unit thresholds may also apply (8+ units)
- Soft costs generally do not trigger DB
- Force account work is exempt (except for PHA staff)
- Volunteers and YouthBuild are exempt 🙋



HOME Applicability

- “Any **contract** for the construction of affordable housing with 12 or more units assisted with [HOME] funds . . .”
 - National Affordable Housing Act of 1990, Sec. 286(a)
- Standard for coverage is construction assisted, not construction financed
- Soft costs **will** trigger DB
 - Land acquisition, A&E fees, down payment assistance
- Once triggered, DB requirements apply to the entire project
- Sweat equity participation is exempt



Contract for Construction Documents

Ensure incorporation into contract document

1. The current appropriate wage decision applicable to the work being done, and;
2. The applicable Federal labor standards clauses
 - a. Public Housing, TDHE/IHA
 - a. HUD-5370 – Contracts over \$100K
 - b. HUD-5370 EZ – Contracts \$2K - \$100K
 - c. HUD-5370 C Part II – Maintenance Contracts \$2K - \$100K
 - d. HUD-5370 C Part I & II – Maintenance Contracts >\$100K
 - b. CDBG, CDBG-DR/HOME/NSP I & II, TCAP
 - a. HUD-4010



Verify Contractor Eligibility

- www.sam.gov
- Print results page or make note to file



Key Davis-Bacon & Related Statutes

- Davis-Bacon Act (DBA)
- Copeland Act (Anti-Kickback Act)
- Contract Work Hour and Safety Standards Act
- “Related” Acts



Davis-Bacon Wage Decisions & Classification Issues



Davis-Bacon Wage Decisions

Character of Construction

Building

- Sheltered enclosures for the purpose of housing persons, machinery, equipment, etc.
- Apartment buildings greater than 4 stories
- Commercial buildings

Residential

- Single family houses, townhouses
- Apartment buildings 4 stories or less

Highway

- Roads
- Highways
- Sidewalks
- Parking areas
- Other paving work not incidental to other construction

Heavy

- Projects which cannot be classified as Building, Residential, or Highway
- Dredging
- Water & sewer lines
- Parks and playgrounds
- Flood control



Obtaining Wage Decisions

- Online at www.wdol.gov

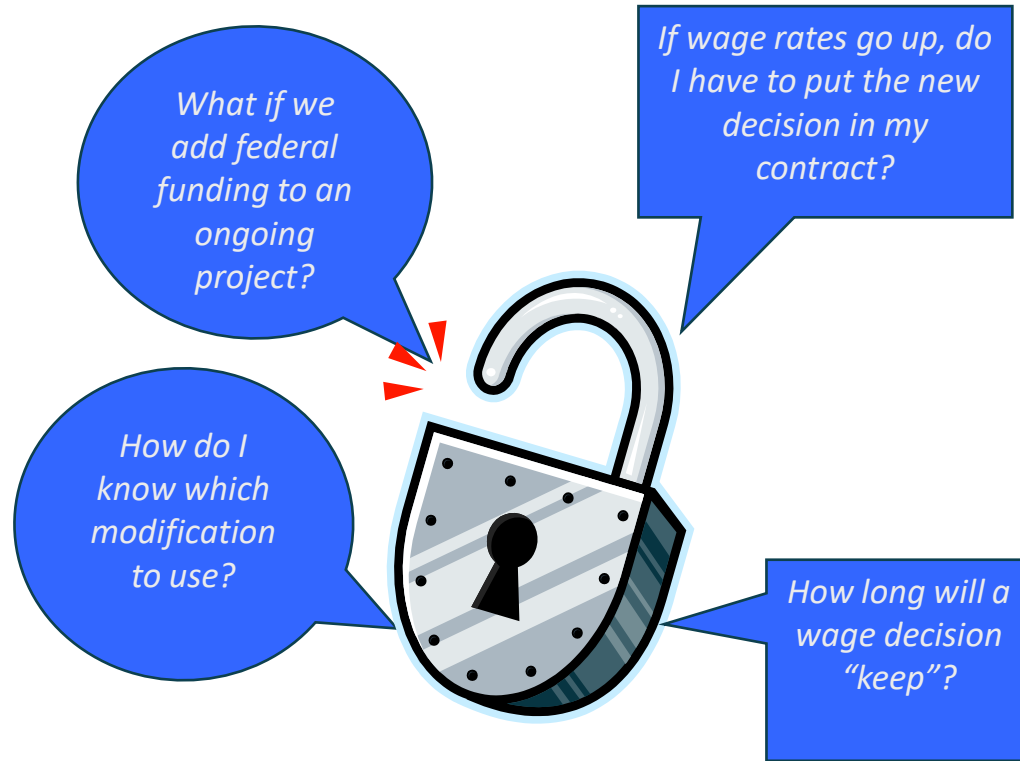


Davis-Bacon Wage Decisions

- In an area **accessible to all workers**, remember to post.....
 - Wage Decision
 - DOL “Notice To All Employees”



“LOCK-IN”



Wage Decision “Lock-In”

Competitively Bid

- Lock-in at bid opening provided contract is awarded within 90 days
- Must update wage decision if contract is awarded more than 90 days after bid opening
- Modifications published <10 days before bid opening are not applicable if there is insufficient time to notify bidders

Negotiated

- Lock-in at contract award date or the construction start date, whichever occurs first



Adding Classifications

Prior to Contract Award

- Review decisions for missing classifications
- Discuss with contractors early
- Submit request after contract award
- *Contract Administrator submits directly to DOL
 - SF-1444



After Contract Award

- Work not represented on wage decision
- Area practice
- “Reasonable relationship” standard
- Consent of all parties
- WHD-CBACONFORMANCE_
- INCOMING@dol.gov



After DOL Decision

- Do not “borrow” classifications/wage rates from other wage decisions
- Contractor’s rights re: additional classifications
- Post new classification & rate
- Restitution payments & documentation requirements



Davis-Bacon Compliance Principles



DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices Trainees & Helpers
- Fringe Benefits
- Computing overtime pay



Enforcement

- Payroll & Document Review
- Employee Interviews



Davis-Bacon Certified Weekly Payroll Reports



Employee Interviews

- Use to validate / test payroll data
- Use to develop complaints – by expanding the number of employees interviewed, following up on claims
- Target interviews to substantiate suspected violations
- Interviews are confidential – the information is not to be shared with contractors
- Fill-able HUD-11 form available - HUDCLIPS
- Spanish version available



Agency Basics - Review

- Ensure submission of certified weekly payrolls
- Conduct on-site interviews
- Check payrolls/related records
- Ensure correction of underpayments
- Prepare / submit required reports
- Maintain records for three years



Correcting Violations

- Require appropriate documentation – require certified correction payroll report
- Obtain written assurance of future compliance for substantial violations
- Submit report to HUD OLR where restitution > \$1,000
- Track all restitution for Semi-Annual Report



Resources



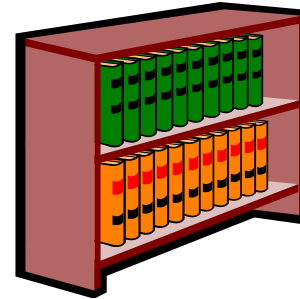
DOL Websites

- Department of Labor DBRA Homepage
www.dol.gov/esa/programs/dbra/index.htm
- Department of Labor Regulations
www.dol.gov/esa/regs/cfr/whdcfr.htm
- Department of Labor Forms
www.dol.gov/library/forms/
- GSA's On-Line Debarment List
www.sam.gov
- Wage Decisions
www.wdol.gov
- DOL/Wage and Hour Division
www.dol.gov/whd/contracts/index.htm



HUD DBLS References

- HUD/Office of Davis-Bacon and Labor Standards -
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards
 - Handbook
 - Guidebooks
 - Labor Relations Letters
 - Forms



Disclaimer

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Questions

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