Overview

» Basics of Prevailing Wage Requirements
  – Federal Statutes
  – Applicability
  – Making Davis bacon Work
  – Requirements
  – Responsibilities
  – Enforcement/Compliance
  – Section 3 Requirements
Major Federal Laws

- Davis-Bacon and Related Acts (DBRA)
- Copeland Act (Anti-Kickback Act)
- Contract Work Hours and Safety Standards Act (CWHSSA)
- Fair Labor Standards Act (FLSA)

Davis-Bacon Act (DBA)

- Enacted in 1931, amended in 1935 & 1964
- Federal construction contracts over $2,000
- Applies to construction, alteration and/or repair including painting & decorating of public buildings or public works contracts
- Requires pay of prevailing wages to all laborers and mechanics employed on site – regardless of any alleged contractual relationship

Davis Bacon Act (DBA)

- Requires weekly pay to mechanic and laborers
- Requires posting of applicable wage decision
- Defines prevailing wage to include fringe benefits
- Permits withholdings from contractors’ payments for wages due
Davis Bacon Act (DBA)

» Permits payment of wage restitution from withheld amounts
» Permits contract termination – contractor underpays mechanic and laborers.
» Permits debarment of persons or firms
  – Disregard for obligations to employees and subcontractors
» Usually applied through the “Related acts”

Davis Bacon and Related Acts (DBRA)

» The Davis Bacon Act is applicable to HUD programs by statutory provisions in HUD related Acts, known as Davis Bacon Related Acts (DBRA)
  – The National Housing Act
  – U.S. Housing Act of 1937, as amended
  – The Housing and Community Development Act of 1974, as amended
  – The National Affordable Housing Act of 1990

Copeland Anti-Kickback Act

» Enacted in 1934
» Makes it a criminal offense for contractors to demand workers give up any part of earned wages
» Requires the submission of:
  – Weekly Certified Payrolls
  – Statement of compliance (with each payroll)
» Allows for civil or criminal prosecution for the “willful” falsification of payrolls
» Regulates payroll deductions from wages
Contract Works Hours and Safety Standards Act (CWHSSA)

- Enacted in 1962
- Applies to contracts of over $100,000
  - Contract Amount – Prime Contractor
- Overtime provision – work in excess of 40 hours per week for covered project
- Liquidated damages – $25 per day, per worker, per violation

Fair Labor Standards Act (FLSA)

- Sets the Federal minimum wage and additional overtime requirements
- Overtime applies to mechanical and laborers working in excess of 40 hours per week.
  - If CWHSSA does not apply, FLSA does
  - DOL enforces FLSA and investigates any violations

Implementing the Basics

Developing and/or implementing strategies and programs to avoid payment of prevailing wages is prohibited.
Davis-Bacon Applicability

» Davis Bacon Applicability to CDBG through Related Acts
  – Housing and Community Development Act of 1974, Section 110(a)
  » Davis-Bacon applies when federal funds are used to pay for construction contracts of more than $2,000 in whole or in part

Residential: the property has 8 or more units

– Property is defined as one or more buildings on an undivided lot or contiguous lots or parcels that are commonly owned and operated as one rental, cooperative, or condominium project
Davis-Bacon Applicability

» Residential examples – CDBG, NSP, Disaster Recovery
  - Multi-family property has 8 units
  - Davis-Bacon applies to rehabilitation - contracts of $2,000 or more

Exceptions - CDBG

» In certain cases, Grantee can pay for non-construction costs without triggering Davis-Bacon

» Demolition, except:
  - If subsequent construction on site is planned as part of the same contract
  - If subsequent construction is contemplated as part of a future construction project under another eligible activity

Exceptions - CDBG

» Volunteer labor
  - Specific record keeping and tracking required
    • the name and address of the agency sponsoring the project
    • a description of the project
    • the number of volunteers
    • the names of the volunteers
    • the hours of work they performed
    • the type of work performed by the volunteers.

» Employees of local grantee
  - Force account labor
Labor Standards Compliance Resources

» CDBG Management Guide
  • Chapter 2
  • Appendix 2
  • Required contract language

Labor Standards Compliance Resources

» A Contractor’s Guide to Prevailing Wage Requirements For Federally-Assisted Construction Projects
Labor Standards Compliance Resources

» HUD Handbook 1344.1 Rev.2

Talk to engineer/architect early
- Ensure that bid documents contain proper wage determination
- Bid notice should include reference to federal prevailing wage requirements
» Talk with your Project Manager

Making Davis Bacon Work

» Job Sites – Safety, Required Postings
» Interviews (on-site workers) – HUD Form 11
» Review of Certified Payrolls – Receive weekly
» Statement of Compliance – all blocks must be completed
» Required Reporting – Enforcement Reports
» Networks – Who are the problems?
Making Davis Bacon Work

» Designate an individual for compliance monitoring
  – Grant recipient is ultimately responsible overall compliance
  – Prime/general contractor is responsible for full compliance of all subcontractors and lower-tier contracts

Grantee Responsibilities

» Before Construction
  – Procurement, bonding, debarment verification, contracting, pre-construction conference

» During Construction
  – Employee field interviews, collection and review of weekly CPR’s, identification of underpayments, restitution payments and restitution CPR’s

» After Construction
  – Ensure files are in order

» Maintain all information/files for 5 years

Grantee Responsibilities

» Project Files
  – Labor Compliance Administration File
    • Procurement
    • Wage determination, additional classification, lock-in
    • Bonding
    • Contract award documentation
    • Construction contract
    • Pre-construction conference minutes
    • Notice to proceed
    • Correspondence
    • Notice of completion
Grantee Responsibilities

» Ensure bid documents, contract and sub contracts contain Federal Labor Standards Provisions (HUD-4010)

» Ensure bid documents, contract and sub contracts contain applicable wage determination

» Review certified payroll reports (CPR’s) and confirm discrepancies through employee field interviews

Obtain A Wage Determination

» Request at least 30 days prior to bid advertising date

» Submit request in IowaGrants

» Contact IDED for modifications to wage determination
  – at least 10 working days prior to bid opening
  • Do not submit a request for 10-day check in IowaGrants system

» Wage determination must be included in all bid documents
<table>
<thead>
<tr>
<th>Rate</th>
<th>Labour Rates Only</th>
<th>Fringes</th>
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**Concrete Finisher**

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**Electrician Voltage and Service Installations and Traffic Signal**

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**Pipefitters and Structural Steel**

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<tr>
<td>Zone 5:</td>
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**ZONE 1 Definitions**

ZONE 1: The Counties of Polk, Warren, and Dallas for all Crafts, and Linn County Carpenters only.
ZONE 2: The Counties of Dubuque for all Crafts and Linn County for all Crafts except Carpenters.
ZONE 3: The Cities of Burlington, Clinton, Fort Madison, Keokuk, and Muscatine (and adjoining municipalities of any such cities).
ZONE 4: Story, Black Hawk, Cedar, Jasper, Jones, Jackson, Louisa, Madison, and Marion Counties; Clinton County except the City of Clinton; Johnson County, Muscatine County except the City of Muscatine, the City of Council Bluffs, Lee County and Des Moines County.
ZONE 5: All areas of the state not listed above.
Contractor Eligibility

After bid letting:

» Verify eligibility status of contractors
  – Debarred/Suspended List
    • www.sam.gov
    • http://www.iowadivisionoflabor.gov/contractor-registration

» Inform contractor of his/her responsibilities

» Required contract language in all contracts

» Request additional classifications

Additional Classifications

» Classification not found on wage determination

» Complete form with contractor’s proposed rate of pay

» Department of Labor makes final decision

» All Agency Memorandum (AAA No. 213)

» Proposed rates must bear a “Reasonable Relationship”
Examine Weekly Payrolls

» Proper classification, including group letter (when applicable)
» Proper wage for work performed
» Check calculations
» Verify method of payment for fringe benefits
» All forms must be certified (signed)
» You should receive original signed payroll reports

On-site Interviews

» Form HUD-11
» Ensure proper classification
» Observe duties on-site – must match classification
» Verify the stated wage conforms to weekly payroll form
On-site Interviews

» Ensure the following items are posted at work site in prominent location:
  – Wage determination
  – Labor posters

Back at the Office

» Cross reference employee interview forms with weekly payrolls
» Note any discrepancies
» Contact the contractor to resolve any issues
» Obtain sufficient documentation for any wage restitution issues
Implementing the Basics

» Develop an effective compliance management system
  - Processes and procedures
  - Overlaps with procurement
  - Coordination

Enforcement and Compliance

Required Job Site Postings

» Davis Bacon Poster
  - Obtain English and Spanish versions
  - Post signs so that all can see
  - Include Authority’s compliance officer’s contact information in the contact block of these posters
  - Post in a highly visible area protected from the weather elements that is easily accessible and traveled by most workers working at the job site

» Whose name is added to the poster as the compliance officer for reporting violations?
Required Job Site Postings

» Project Wage Decision
  – Approved DOL conformance / additional classifications

» Other DOL Required Posters
  – EEO
  – FLSA
  – OSHA
  – DOL website: [www.dol.gov](http://www.dol.gov) – posters are available for downloading

Enforcement

» Payroll & Document Review
» Employee Interviews
» Additional Classifications/Conformances
Enforcement

» Establish enforceable procedures/processes
  - Share with applicable entities

» Identify and document violations

» Notify the contractor (in writing)

» State date for completion

Enforcement

» Investigate and resolve complaints

» Look for payroll red flags
  - Mis-classifications
    • Apprentices
  - Laborers v. skilled workers
    • Cement mason/concrete finishers
    • Plumbers
  - Not enough employees
  - Ghost employees
Enforcement

- Same hours, same rate of pay, same gross, same net
- Non-allowable deductions
- “Other” deductions listed but no authorization
  
  » Ensure restitution, if any, is paid timely
  » Pursue debarment, if necessary
    - Debar locally – (are there local policies?)
    - Refer to HUD for debarment and or restrictions
  » Determine other action, if necessary

Conformance / Additional Classifications

» This process can now be completed in IowaGrants system

» The proposed rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision
  
  - All Agency Memorandum No. 213
Guidance – Additional Classifications

» Determine if the classification being conformed:
  – Is a laborer classification

» Action:
  – Recommend a wage rate that uses the existing common laborer wage rate as a benchmark

Wage Determinations

» Use of Heavy Sewer/Water Treating Plant wage determination, IA4 (currently IA190003 Mod 0) for all treatment projects, including lagoon or mechanical treatment plants.
» Heavy/Highway wage determination, (currently IA190028 Mod 0)
Common Issues and Problem Areas

Common Questions – Wage Rates

» Why are the rates so high?
» Can a contractor appeal a DOL approved rate?
» Where is the guidance for appealing a wage rate?
» Why are major crafts/trades missing from wage decisions?

Common Questions

» How can a contractor estimate the labor costs when the trade / craft is not listed on the wage decision?
» Why is the trade / craft “not” listed on the wage decision?
» Why does the DOL restrict when to submit the conformance/request for additional classification?
Self-employed Owners – The Rule

» Owners of a subcontractor firm who are themselves performing work of laborers and mechanics are entitled to the applicable prevailing wage rate for the classification of the work performed

» HUD Office of Labor Relations Letter (LR-96-01)

Self-employed Owners

» Include in the sub-contract:
  - the total hourly prevailing wage rate for the trade, and
  - The estimated number of hours for job completion

» Develop a system for tracking dates and hours worked on the prevailing wage project for these mechanics and laborers

Payroll Report

» Carried on the responsible employer's weekly payroll
  - Must include name, work classification, actual hour of work, effective hourly rate, and amount paid

» Owners Working with Their Crew
  - Can certify payroll report
  - Must include name, work classification including “owner” and daily and total hours worked
  - Do not need to list a rate of pay or amounts earned
Payroll Issues – Red Flags

» Apprentices
  - You notice the following:
    • Workers classified as apprentices with a rate of pay lower than the prevailing wage rate
  - On the apprenticeship information you notice:
    • One worker’s beginning date is after the start of his work on the prevailing wage project
    • Another worker’s ending date is before the start of his work on the prevailing wage project
    • No information submitted for one apprentice

» What do you do?

Payroll Issues – Apprentices

» Require the following:
  - Individual registration for the apprentice
  - Relevant pages from DOL approved apprenticeship program
    • Title page (shows name of the program)
    • Page reflecting ratio of apprentices to journeyman
    • Page reflecting pay scale for apprentices
      - Includes apprenticeship level and percentage of journeyman’s rate for each level
    • Page reflecting fringe benefits
      - If silent on fringe benefits, pay full amount of fringe benefit stated on the wage decision
    • Signatory page (reflects signatories to agreement)

» Absent this information, pay full journeyman’s rate

Statement of Compliance

» Contractor failed to include all required information
  - No information in block 1
  - No sub-block of 4 (regarding fringe benefit payment) checked, or wrong block checked
  - No original signature
  - Payroll clerk signed the statement of compliance
DOL All Agency Memorandum (AAM)

» Conformance / Additional Classification Requests
  - AAM 213 – March 2013
    Proposed rate must bear a reasonable relationship to all wage rates in the decision (skilled to skilled; laborer to laborer)

» Surveyors – DBA applicability
  - AAM 214 – March 2013
    • DBA applies if done immediately before or during construction in support of construction crews

Resources

» CDBG Management Guide
» A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects
  - Labor Relations Desk Guide LR01.DG
» Federal Labor Standards Requirements in Housing and Urban Development Programs (1344.1 Rev. 2)
» Wage Determinations Online Website
  - https://beta.sam.gov/

Section 3 Requirements
Section 3 Overview/Changes

» Overview
» Section 3 is HUD’s legislative directive for providing preference to public housing residents and low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training and contracting opportunities resulting from HUD-funded projects
» ensure that public housing residents and low- and very low-income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created

Section 3 Overview/Changes

» A Section 3 resident is:
  – a public housing resident OR
  – a low- or very low income person residing in the metropolitan area or non-metropolitan county where the Section 3 covered assistance is expended

» A Section 3 business is:
  – That is 51 percent or more owned by section 3 residents; or
  – Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
  – That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 Overview/Changes

» When Section 3 Applies
  – Section 3 applies to projects/activities involving housing (construction, demolition, rehabilitation) or other public construction—including roads, sewers, community centers, etc.
  – Section 3 applies to CDBG projects when:
    1. The recipient’s CDBG contract with the State of Iowa exceeds $200,000, and involves housing and/or public construction.
    2. The recipient has contracted with subcontractors for services and the contract amount is over $100,000.
  – If no individual subcontract for activities exceeds $100,000, responsibility for complying with Section 3 only applies to the recipient (City/County and the State)
**Section 3 Overview/Changes**

» Please note that while Section 3 applies to projects and contracts described above, the Section 3 requirements are only triggered when the normal completion of construction and rehabilitation projects creates the need for new employment, contracting or training opportunities.

» **Compliance with Section 3**
  
  » Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors/subcontractors.

<table>
<thead>
<tr>
<th>Procurement &amp; Bid Documents</th>
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<tbody>
<tr>
<td>CDBG recipients must include Section 3 language in all procurement and bid documents. The required language to be included in these documents can be found in the appendix to this chapter of the CDBG Management Guide. In addition to the required language, recipients must include the “Intent to Comply with Section 3” form with all RFPs.</td>
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<thead>
<tr>
<th>Selecting Contractors with Section 3</th>
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<tbody>
<tr>
<td>Section 3 requires recipients make an effort to the “greatest extent feasible” to facilitate contracts to Section 3 businesses.</td>
</tr>
<tr>
<td>Recipients may give preference to Section 3 businesses as a means of evaluation criteria for professional services contracts where proposals are solicited.</td>
</tr>
<tr>
<td>To give preference to Section 3 businesses during the contract awarding process, recipients must ask the contractor to certify whether or not they are a Section 3 business when soliciting for proposals.</td>
</tr>
<tr>
<td>“Intent to Comply With Section 3” form that will be provided with procurement documents and submitted by bidders.</td>
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</tbody>
</table>
Hiring & Training with Section 3
- Recipients and their contractors/subcontractors are required to give hiring and training preference to Section 3 residents, to the greatest extent feasible, when new employment opportunities result from a CDBG funded project.
- Notices of employment/training opportunities must be sent to the Iowa Chapter of the National Association of Housing and Redevelopment Officials (NAHRO).

Goals under Section 3
- Federal regulations establish numerical goals for employment/training for Section 3 residents and contracts to Section 3 businesses.
- A recipient that has not met the numerical goals must explain why it was not feasible to meet the established numerical goals.
- Note: It is important to document efforts made to comply with Section 3. Recipient files should contain any memos, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals.

Penalties for Non-Compliance
- Communities and contractors found in violation of Section 3 requirements may result in:
  - Sanctions from HUD
  - Termination of contract for CDBG funds
  - Debarment or suspension from future HUD assisted (CDBG) contracts.
- Non-compliance with Section 3 can impact a community’s ability to receive CDBG funding in the future.

Reporting Requirements & Forms
- If the expenditure of CDBG funds does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, even if the CDBG-funded/Section 3 covered project did not create new employment opportunities, this information must be reported to IEDA.
- To report Section 3 data to IEDA, recipients will report annually to IEDA. This report will be submitted through Iowagratings.gov and will be due by December 31st of each year.
- Recipients will need to report Section 3 accomplishments and/or provide a detailed explanation of why Section 3 goals were not met.

Section 3 Business Registry
- HUD’s online database
Questions?

» Contact Your Project Manager
» Contact Me
  Dan Narber
  515.348-6214
  dan.narber@iowaeda.com

THANK YOU!