







Criteria For Considering DBA Coverage

- Is the “contract for construction” a contract for construction of a public building or public work of the U.S. or the District of Columbia?
- A “public building” or “public work” – includes “a building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.” 29 CFR 5.2(k)

Davis-Bacon Related Acts

- Davis-Bacon (DB) requirements extend to numerous “related Acts” that provide federal assistance by
 - Grants
 - Loans
 - Loan guarantees
 - Insurance

Davis-Bacon Labor Standards/Contract Stipulations

- The term “labor standards” means the requirements of:
 - The Davis-Bacon Act
 - The Contract Work Hours and Safety Standards Act
 - The Copeland Act
 - Prevailing wage provisions of the Davis-Bacon and “related Acts”; and
 - Regulations, 29 CFR 1, 3, and 5

Wage Determinations

- Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein
- Two types of wage determinations: general and project

Selecting the Correct Wage Determination

- Selecting and incorporating the appropriate general wage determination for the project type
 - Building
 - Residential
 - Heavy
 - Highway
 - Guidance provided in AAM 130
- Multiple wage determinations may apply where there are separate construction types and the different type of construction is at least 20 percent of the project cost or exceeds \$2.5 million – guidance provided in AAMs 131 and 236

Selecting the Correct Wage Determination

Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award.
- Competitively bids contracts: In effect 10 days or more before opening of bids
- Exceptions
- If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension to the 90 day period

Interpreting General Wage Determinations

Useful information contained in a general wage determination:

- State and county
- Type of construction with description
- Record of modifications
- List of classifications and rates
- Basis for rates – Identifiers
 - Union Identifiers
 - Union Weighted Average Identifiers
 - SU Identifiers

Wage Determinations Contracting Agency Responsibilities

- Ensure proper wage determination (WD) is identified and applied
- Advise contractors which schedule of rates applies to various construction items; and
- Advise contractors regarding the duties performed by various crafts in the WD

Conformances

- Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR § 5.5 (a)(1)(ii))
- Conformance requirements:
 - The work to be performed by the proposed classification is not performed by a classification already on the wage determination (WD)
 - The proposed wage rate must bear a reasonable relationship to the WD rates; and
 - The proposed classification is utilized in the area by the construction industry

Laborers and Mechanics

- Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR § 5.5 (a)(1)(ii))
- Conformance requirements:
 - The work to be performed by the proposed classification is not performed by a classification already on the wage determination (WD)
 - The proposed wage rate must bear a reasonable relationship to the WD rates; and
 - The proposed classification is utilized in the area by the construction industry

Wages & Fringe Benefits

- All laborers and mechanics employed or working upon the site of work must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 CFR § 5.5 (a)(1)(ii), without regard to skill
- The laborers and mechanics working on the site of work must be paid weekly, unless the fringe benefits are paid into a bona fide FB plan and then *contributions* must be paid no less often than quarterly

Wages and Fringe Benefits

- Laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill
- Laborers and mechanics who perform work in more than one classification may be paid the different applicable rates for the work they actually perform if the employer keeps an accurate record of the time spent working in each classification and pays accordingly

Wages and Fringe Benefits

- Under DBA, FBs are a component of the DBA “prevailing wage”
- The prevailing wage obligation may be satisfied by:
 - Paying the base hourly rate (BHR) and FB in cash (including negotiable instruments payable on demand)
 - Contributing payments to a bona fide plan; or
 - Any combination of the two
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)

Funded Fringe Benefit Plans

- Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:
 - Are *irrevocably* paid; and
 - Are made regularly, not less often than *quarterly*
- Credit is for payments made for individual workers eligible to participate in the plan, program, or fund

Unfunded Fringe Benefit Plans

- Costs for an “unfunded” FB plan count towards WD obligation if specific criteria are met:
 - The contributions reasonably anticipate the cost to provide a bona fide FB
 - Contributions are made pursuant to an enforceable commitment
 - That is carried out under a financially responsible plan; and
 - The plan has been communicated in writing to affected workers

Certified Payrolls

- Two separate contract clause requirements apply to “certified payrolls” for a project:
 - The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls. 29 CFR § 5.5 (a)(3)(ii)(A)
 - Each weekly payroll submitted must be accompanied by a “Statement of Compliance”. 29 CFR § 5.5 (a)(3)(ii)(B)

Certified Payrolls

- Weekly payrolls must include specific information as required by 29 CFR § 5.5(a)(3)
- Weekly payroll information may be submitted in any form desired
 - Optional Form WH-347 is available for this purpose
 - The WH-347 form, with instructions, is at:
<https://www.dol.gov/agencies/whd/forms/wh347>

Investigations

- **DOL Functions/Responsibilities:**
 - Determining “prevailing wages”
 - Issuing regulations and standards to be observed by contracting agencies; and
 - Perform oversight function and has independent authority to conduct investigations
- **In addition to including the contract stipulations and correct wage determinations, contracting agencies also have the authority to conduct investigations**

Investigative Process

- Initial conference with employer
- Examine certified payrolls
- Examine basic payroll records
- Check for compliance with apprenticeship and/or trainee requirements
- Interview employees
- Determine if a conformance is necessary
- Compute back wages and liquidated damages, if any
- Final conference with employer to discuss results of the investigation

Withholding

- DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute
 - 40 U.S.C. § 3142 (c)(3); 40 U.S.C. § 3702 (d)
- Withholding of contract funds is an effective enforcement tool in DBA/DBRA/CWHSSA cases
 - It protects the rights of covered workers to wages due them

Withholding of Contract Funds FAR (48 CFR Part 22)

- FAR guidance in 48 CFR Part 22 instructs that if the contracting officer believes a violation exists, or upon request of the Department of Labor:
 - the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due under the CWHSSA. 48 CFR § 22.406-9(a)

Withholding of Contract Funds
FAR (48 CFR Part 22, cont'd.)

- If subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary
- If DOL requested the withholding, the contracting officer must not reduce or release the withheld funds without written approval by DOL
- The withheld funds are to be used to satisfy:
 - assessed liquidated damages; and
 - unless the contractor makes restitution, validated wage underpayments

Debarment

- Occurs when a contractor is declared *ineligible* for future contracts due to:
 - Violations of the DBA in disregard of its obligations to employees or subcontractors
 - Aggravated or willful violations under the labor standards provisions of the related Acts
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA
- The debarment process is provided at 29 CFR 5.12(b)

Debarment Criteria

- Debarment is considered when a contractor has:
 - Submitted falsified certified payrolls
 - Required “kickbacks” of wages or back wages
 - Committed repeat violations
 - Committed serious violations
 - Misclassified covered workers in clear disregard of proper classification norms; and/or
 - As a prime contractor, failed to ensure compliance by subcontractors

AAM Guidance – Referral to WHD Refusal-to-Pay & Debarment Cases

- AAM No. 215, dated March 7, 2014, provides contracting agencies with guidance regarding:
 - Referral of refusal-to-pay and debarment cases to the WHD regional offices; and
 - Procedures for contracting agencies to use when sending withheld funds due covered laborers and mechanics to WHD for disbursement

Internet Sites

- Wage Determinations – <https://sam.gov/>
- Wage and Hour Division - <https://www.dol.gov/agencies/whd>
- Resource Book - <https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book>
- Office of the Administrative Law Judges Law Library - <https://www.dol.gov/agencies/oalj/>
- Administrative Review Board - <https://www.dol.gov/agencies/arb>

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