



BROADBANDUSA
CONNECTING AMERICA'S COMMUNITIES

BTOP Webinar: CCI Davis Bacon

Conference Call and Webinar

August 09, 2012
2:00-3:00 PM EST

Made Possible by the Broadband Technology Opportunities Program

Funded by the American Recovery and Reinvestment Act of 2009





Agenda

1. Presentation on Davis Bacon Process
 - Don Williams, BTOP Business and Industry Specialist
 - Tips for compliance
 - Roles and responsibilities
 - Recordkeeping and monitoring requirements
2. Closing Remarks
3. Q&A - Submit Questions to BTOP@ntia.doc.gov





Davis-Bacon Act

Broadband Technology Opportunities Program (BTOP)

Technical Assistance Webinar

Davis-Bacon Compliance

Thursday, August 9, 2012





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CONNECTING AMERICA'S COMMUNITIES

Objective:

Understand the Davis-Bacon Act as it relates to BTOP grants, including the purpose, and how it affects construction, alteration, or repair of public buildings or public works.





NTIA views the protection of workers as an important part of BTOP compliance

- Local workers are partners in accomplishing BTOP projects
- Davis-Bacon Act ensures that these workers are paid a fair rate for their work based on statewide surveys by county.
- Recipients should set the example of fair treatment and support employee rights by:
 - Monitoring contractors, subcontractors, and vendors
 - Posting Davis-Bacon posters on the job site
 - Working with local labor groups to ensure transparency in employee protection

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:

1-866-4-USWAGE 
 (1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division





Recipients should be aware that they must comply with the Davis-Bacon Act requirements

YES or NO

KEY QUESTIONS



Is the value of the contract in excess of \$2,000?



Does the contract include construction, alteration, or repair activities?



Are these activities funded, in whole or part, under BTOP grant awards?

If the answers are all "YES"...

Contractors (and their subcontractors) must pay workers no less than the locally prevailing wages and fringe benefits paid on similar projects.





Davis-Bacon Act applies to workers whose duties are manual or physical in nature

- Includes
 - Laborers and Mechanics
 - Apprentices
 - Trainees (no 1444 conformance)
 - Helpers (no 1444 conformance)
- Does Not Include
 - Timekeepers, inspectors, architects, engineers
 - Bona fide executive, administrative, and professional employees as defined under FLSA
 - Working foremen are generally non-exempt





Davis-Bacon requirements apply to every CCI project but not every PCC project

- Replacement of existing conduit
- Laying cable
- Tower climbing
- Headend tech
- Fiber splicer
- Pouring slab
- Flaggers
- Splicers
- Equipment operators-borers, trenchers, brush hogs
- Tearing out and replacing wall
- Bolting furniture or fixtures to floors, walls and/or ceilings
- Modifying walls, floors and/or ceilings to accommodate shelving
- Installing electrical connections for desk area outlets

See FAR 48 C.F.R. § 22.402(b) for a complete list





Apprentices, Trainees, and Helpers

- Apprentices
 - Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
 - Include individuals in their first 90 days of probationary employment as an apprentice
- Trainees
 - Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advance by DOL's Employment Training Administration (ETA)
 - 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
 - Conformance requests are not needed for bona fide:
 - Apprentices
 - Trainees
- Helpers
 - 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(highly unlikely)





Type of Construction

- **Building Construction**
 - Includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.
- **Heavy Construction**
 - Includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification.
 - Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.
- **Highway Construction**
 - Includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.
- **Residential Construction**
 - Includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks





Davis-Bacon Act applies only to workers on the “Site of the work”

- “Site of the work” includes
 - The physical place or places where the construction called for in the contract will remain after work has been completed
 - Any other site where a **significant** portion of the building or work is constructed, provided that such site is established specifically for the contract
 - Job headquarters, tool yards, batch plants, borrow pits, etc., provided they are located adjacent or virtually adjacent to the site of work
- “Site of the work” does not include a contractor’s or subcontractor’s permanent home office, branch locations, fabrication plants, tool yards, etc., whose location and continuance in operation are determined without regard to a particular covered project.
- Time spent at the home office, picking up supplies, traveling to the work site, etc., are not DBA hours.





29 CFR 5.2(j) defines the terms “construction, prosecution, completion, or repair” to mean

All types of work done on a particular building or work at the site thereof (including work at a facility deemed part of the “site of the work”) by laborers and mechanics of a construction contractor or construction subcontractor including without limitation:

- Altering, remodeling, and installation (where appropriate) on the site of the work of items fabricated off-site
- Painting and decorating
- Carpet laying and the installation of draperies when it is performed as an integral part of or in conjunction with new construction, alteration, or reconstruction
- Refinishing of floors and the installation of wall covering or hanging wallpaper





Transportation and board and lodging expenses

- Where an employer sends employees who are regularly employed in their home community away from home to perform a special job at a location outside daily commuting distances from their homes so that, as a practical matter, they can return to their homes only on weekends, the assumption by the employer of the cost of the board and lodging at the distant location, not customarily furnished the employees in their regular employment by the employer, and of weekend transportation costs of returning to their homes and reporting again to the special job at the end of the weekend, are considered as payment of travel expenses properly reimbursable by the employer and incurred for its benefit.





Supply and installation contracts

Whether installation work involves more than an incidental amount of construction activity depends upon the specific circumstances of each particular case and no fixed rules can be established which would address every fact situation. Factors requiring consideration include:

- Nature of the prime contract work
- Type of work performed by the employees installing the equipment on the project site (*i.e.*, the techniques, materials, equipment used and the skills called for in its performance)
- Extent to which structural modifications to buildings are needed to accommodate the equipment (such as widening entrances, relocating walls, or installing wiring)
- Cost of the installation work, either in terms of absolute amount or in relation to the cost of the equipment and the total project cost





DBRA does not apply to construction work which is incidental to

The furnishing of supplies or equipment, if

- The construction work is so merged with non construction work or so fragmented in terms of the locations or time spans of its performance that the construction work is not capable of being segregated as a separate contractual requirement.





Summer youth employment and Volunteers

Under the guidelines set forth in All Agency Memoranda # 71 and 96, DOL will take no exception to the practice of paying less than the predetermined laborer or journeyworker's rate to bona fide students employed on a temporary basis for the summer months only if the:

- Employment is part of a bona fide youth opportunity program such as that sponsored by union and management or by a governmental or community group

Employment must be:

- In accordance with statutory age and minimum wage requirements
- Sponsorship by an individual contractor for only one particular project would not qualify for the exception
- There are no exceptions to DBRA coverage for volunteer labor unless an exception is specifically provided for in the particular D-B Related Act under which the project funds are derived. DOL does not have the authority to grant waivers for volunteer labor





Cleaning work is covered by the DBRA

- Cleaning work is covered by the DBRA in situations where the cleaning is performed as a condition precedent to the acceptance of a building as satisfactorily completed. For example, this would include activities such as window scraping and washing, removal of excess paint, and sweeping. Where cleaning is carried out after the construction contractor and subcontractors have finished their work, left the site, and the contracting agency has accepted the project as completed, such work would not be considered a part of the “construction” and would not be covered under DBRA.





In some cases, recipients may need to issue multiple wage schedules

- Multiple wage schedules are issued if the construction items are substantial in relation to project cost—more than approximately 20 percent.
- Only one schedule is issued if:
 - Construction items are “incidental” in function to the over-all character of a project (e.g., hut node construction)
 - If there is not a substantial amount of construction in the second category. (Note here that 20 percent is a rough guide)
- All Agency Memorandum No. 131 for additional information
 - All Agency Memorandum No. 131, multiple wage schedules are issued if the construction items are substantial in relation to project cost—more than approximately 20 percent. Only one schedule is issued if construction items are “incidental” in function to the over-all character of a project (e.g., paving of a parking lot) and if there is not a substantial amount of construction in the second category. (Note here that 20 percent is a rough guide)





Use of Old Wage Determinations

- Archived Wage Determination can be used when asking for conformances for job classifications used in a previous years contract which was not issued a DOL conformance letter
- Ensure date of construction start matches time of archived wage determination





Wage and fringe together in combination must equal the total MW obligation

- A contractor or subcontractor performing work subject to a DBRA wage determination may discharge its MW obligations for the payment of both straight time wages and fringe benefits by:
 - paying both in cash or;
 - making payments or incurring costs for "bona fide" fringe benefits or;
 - by a combination thereof.
- Contractor may offset an amount of monetary wages paid in excess of the MW required under the determination to satisfy its fringe benefit obligations. (*See* 40 U.S.C. § 3142(d) and 29 CFR Part 5.31.)
- Example:
 - Basic Hourly Rate \$17.00
 - Fringe Benefits 4.00
 - Total MW/FB Obligation \$21.00. This could be satisfied by any of the following:
 - (1) \$21.00 in cash wages;
 - (2) \$17.00 plus \$4.00 in pension contributions or other "bona fide" fringe benefits;
 - (3) \$15.00+ plus \$6.00 in pension contributions or any combination of "bona fide" fringe benefits.





Recipients can find more information about wage rates in their area from the Dept. of Labor

- Wage determinations are issued by locality, typically on a county-by-county basis
- Recipients will need to submit a Conformance request (using [SF-1444](#)) if a rate is not available
- State wage rates take precedence when they are higher than the Federal wage rates



Wage determinations are available through Labor's Wage and Hour Division or Wage Determination website at <http://www.dol.gov/whd/> or www.wdol.gov.





Recipients are responsible for including provisions in their prime and sub contracts

- Recipients must include these provisions when discussing potential contracts
- NTIA will help direct recipients to the appropriate resources to find their local Wage Determination (WD) points of contact to ensure that proper WD is applied
- NTIA will check the 1444s when submitted for basic issues such as line 16 for union reps, employees only, correct wage determination, county, and other required information

Standard Davis-Bacon Contract Provisions

- Laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at least once a week
- No paycheck deductions or rebates are permitted, except as permitted under DOL regulations
- Wage and fringe benefit rates must be no less than those contained in DOL wage determination for the labor classification for the work actually performed
- Contracts more than \$100,000 must have additional standard clauses, including paying overtime to laborers and mechanics of an amount of 1.5 times the basic rate of pay





Conformance Process

- Contractors identify needed classes
- Complete Contractor Part of SF-Form 1444
 - Apply Conformance Key Criteria
- Subcontractors forward to prime contractor
 - Identify needed classes
- Pre-construction conference
- Certified payrolls
- On-site inspections
- Contractor/employee/union/competitor inquiries/complaints
- Conformance request form (SF-1444 or other) to contractors





Conformance Process cont'd

- Forward Review contractor conformance request
- Get interested parties' and employee views
- Apply key criteria for approval
- Document parties' agreement or dispute (including agency views)
- Document agency recommendation
- Contracting Officer Signature SF-Form 1444 to agency for review, signature, and submission to DOL
- Submit conformance request to DOL for review and determination
- Communicate with DOL to:
 - Obtain status if no response in 45 days/ DOL is actually taking much longer
 - Respond to requests for additional information needed by DOL to process the request





Recordkeeping and monitoring are key requirements for BTOP grants

Recipients need to be able to show the following upon request (during site visits):

- Weekly certified payroll documentation using [Form WH-347](#)
- Weekly reviews of payroll documentation for subrecipients, contractors, or subcontractors
- Contracts with subrecipients and vendors documenting compliance with Davis-Bacon requirements
- Interviews with workers
- Corrected certified payrolls





DBA Certified Payrolls

- DBA requires covered contractors to pay their workers not less than DBA-required wages and fringe benefits, in full, on a weekly basis
- The Copeland Act and DBA regulations require contractors to provide payroll information each week, listing the workers on the project, including work classifications, hours worked, wage rates, benefits, overtime compensation, total wages paid, and information related to payroll deductions. The basic information required is almost identical to the information already required of contractors by the IRS.
- The Copeland Act requires DBA-covered contractors to provide a signed "Statement of Compliance" (or "certified payroll") certifying that the weekly payroll information is correct and complete and that each laborer and mechanic has been paid not less than the DBA prevailing wage and benefit rate for the work performed that week.





DBA Certified Payrolls cont'd

- DOL's Form WH-347, "Payroll," and instructions for completing it, can be found in a fillable PDF format at www.dol.gov/whd/forms/index.htm. The second page is used to report information about payment of fringe benefits and contains the "Statement of Compliance."
- Contractors may, however, provide another payroll reporting format as long as the payroll information is identical to that required by WH-347, and the "Statement of Compliance" contains the same certification language.





Worker Interviews

- Each BTOP/ARRA-Award Recipient is responsible to conduct wage interviews for compliance with Section 1606 Davis Bacon provisions of the ARRA Act
- Use Standard Form 1445 or equivalent to memorialize interviews
- A grantee DB compliance reviewer should visit the job site and interview workers concerning their wages, hours, benefits, classifications, payroll deductions, and other related subjects
- Contractors are required by law to provide access to their workers for the purpose of interviewing at the job site
- Every effort will be made to ensure that the interviews cause as little disruption as possible in performance of the work on the job site
- General policy is to protect the identity of workers and other sources during a compliance review. Therefore, such information should not be disclosed without prior consent of the source
- Required interview records to be maintained by the Grantee
- Notes to the file confirming spot-check of payroll records





Where underpayments of wages have occurred

- Notification to the Employer/Prime Contractor by grantee
 - The grantee administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid
 - The employer/prime contractor is allowed 30 days to correct the underpayments
- Computing Wage Restitution
 - Wage restitution is the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred
 - The difference in the wage rates is called the *adjustment rate*
- Correction Payrolls
 - The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). A signed Statement of Compliance must be attached to the correction payroll. (Never return a certified payroll even if incorrect!)





Underpayments of wages cont'd

- Unfound Workers

- After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid
- In such cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid
- The contract administrator will continue attempts to locate the unfound workers for 3 years after the completion of the project
- After 3 years, any amount remaining in the account for unfound workers will be credited or forwarded by the contract administrator to DOC





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