

# COMPLYING WITH DAVIS-BACON REQUIREMENTS

By Ted R. Fylstra



As more local governments seek funding from federally funded grant and loan programs to complete capital projects, they must meet the conditions tied to these funds including the Davis-Bacon and Related Acts (DBRA) requirements. Programs that are typically used by local governments that require DBRA compliance include Community Development Block Grants (CDBG), State Revolving Fund Loans and Grants (SRF), Economic Development Administration funding, and many other programs.

DBRA are administered by the Wage and Hour Division of the United States Department of Labor. These Acts apply to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works.

## Basic Provisions/Requirements

The Davis-Bacon Act requires that all contractors and subcontractors performing work on federal contracts (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of \$2,000 pay their employees not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination(s) for corresponding classes of workers employed on similar projects in the area. Davis-Bacon labor standards clauses must also be included in all prime and sub-contracts.

Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department of Labor. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department of Labor.

Contractors and subcontractors on prime contracts in excess of \$100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek.

Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency and/or its agent.

## Employee Rights

The DBRA provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the Department of Labor, for the type of work performed.

## Employee Identification

In 1986, Congress reformed US immigration laws. These reforms, the result of a bipartisan effort, preserved the tradition of legal immigration while seeking to close the door to illegal entry.

Employment is often the magnet that attracts individuals to reside in the United States illegally. The purpose of the employer sanctions law is to remove this magnet by requiring employers to hire only individuals who may legally work here: citizens and nationals of the United States, lawful permanent residents, and aliens authorized to work. To comply with the law, contractors must verify the identity and employment authorization of each person hired, complete and retain a Form I-9 for each employee, and refrain from discriminating against individuals on the basis of national origin or citizenship.

The I-9 form includes, on its back, a list of acceptable documentation to establish an employee's identity and employment eligibility.

## Notices and Posters

Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 "Employee Rights Under the Davis-Bacon Act" poster at the site of the work in a prominent and accessible place where it may be easily seen by employees. There is no particular poster size requirement. The wage determination(s) must be similarly posted.

## **Recordkeeping**

Under the DBRA, covered contractors must maintain payroll and basic records for all employees during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and Social Security number of each employee;
- Each employee's work classification(s);
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents;
- Daily and weekly numbers of hours worked;
- Deductions made;
- Actual wages paid;
- If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected;
- If applicable, detailed information regarding approved apprenticeship or trainee programs.

## **Reporting**

Each covered contractor and subcontractor must, on a weekly basis, provide the contracting agency and/or its agent a copy of all payrolls providing the information listed above under "Recordkeeping" for the preceding weekly payroll period. Each payroll submitted must be accompanied by a "Statement of Compliance." The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form WH-347 "Payroll" or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period.

## **Penalties/Sanctions**

Contractors or subcontractors found to have disregarded their obligations to employees, or to have committed aggravated or willful violations while performing work on Davis-Bacon covered projects, may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages that result from overtime violations of the Contract Work Hours and Safety Standards Act (CWHSSA).

Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

## **Owner Responsibilities**

Under DBRA, the recipient of the funding is responsible to monitor compliance with the Act. These tasks include confirming compliance with employee notice requirements, review of the weekly certified payroll reports for completeness and compliance with the wage rate standards, conducting periodic labor interviews to confirm accuracy of the payroll reports, prepare certified payroll exception reports identifying missing and conflicting information, coordinating with the contractor to correct payroll deficiencies, and maintaining orderly records for agency and independent audits.

Should you have questions or need assistance regarding Davis-Bacon requirements, CSI can assist both funding recipients and contractors with monitoring programs or completing reporting forms. Davis-Bacon requirements may appear daunting but, with our assistance, compliance monitoring doesn't need to be time consuming or difficult.

Reference: Department of Labor

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