PREVAILING WAGE SEMINARS
Davis-Bacon Coverage
• Enacted in 1931

• Amended in 1935 and 1964

• Protects communities and workers from non-local contractors underbidding local wage levels
Coverage of the DBA

- Applies to contracts in excess of $2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.
Criteria For Considering DBA Coverage

• Is the agreement a “contract for construction” to which the Federal Government or District of Columbia is a party?

• “Construction” includes all types of work done on a particular building or work at the site thereof, as defined in the regulations (section 5.2(j)(1)).

• A contract is “for construction” if “more than an incidental amount of construction-type of activity is involved in the performance of the government contract.”
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)
Public Funding

- The structure of the payments does not determine DBA coverage.
- Any expenditure or transfer of funds or an asset of financial value either directly or indirectly in exchange for construction is considered public funding.
- It can include grants, awards, subsidies, or the conveyance or other transfer of property or real assets.
Leases as Contracts for Construction

- DBA can apply to certain federal lease contracts that also call for construction of a public work or building.
  - The terms “public building“ and “public work” are defined in 29 C.F.R. § 5.2(k) to include “every 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.”
AAM No. 176, issued on June 22, 1994, provides guidance on:

- “Application of the Davis-Bacon Act to Buildings and Works Constructed and/or Altered for Lease by the Federal Government.”

If a lease calls for construction, alteration, and/or repair:

- Apply AAM No. 176 guidance to determine whether DBA requirements need to be in the lease.
Consider the following factors in determining whether DBA applies to a lease/construction contract:

- Length of the lease;
- Extent of government involvement in the construction project;
- Extent the construction will be used for private rather than public purposes;
- Extent construction costs will be paid for by lease payments; and
- Whether it is written as lease to evade the DBA.

If there are any questions concerning the applicability of DBA coverage in a lease/construction situation, please contact WHD.
• Davis-Bacon (DB) requirements extend to numerous “related Acts” that provide federal assistance by
  • Grants
  • Loans
  • Loan guarantees
  • Insurance
DBRA Examples

• HUD financed construction of low-income housing projects

• The Federal Highway Administration provides grants to states for reconstruction of roads and bridges on Federal-aid highways
Distinguishing DBA and DBRA

- Examples of DBA Projects:
  - VA hospital
  - Federal office building (GSA)
  - Military base housing (DOD)
  - National Park road (Dept. of Interior)
Examples of DBRA Projects:
- HUD - assisted housing construction project
- EPA - assisted water treatment plant construction project
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.
• 5.5(a)(1) - Minimum wages

• 5.5(a)(2) - Withholding

• 5.5(a)(3) - Maintaining basic payroll records

• 5.5(a)(4) – Apprentices and trainees

• 5.5(a)(5) – Copeland Act compliance
• 5.5(a)(6) - Subcontracts

• 5.5(a)(7) - Contract termination and debarment

• 5.5(a)(8) - Rulings and interpretations

• 5.5(a)(9) - Disputes concerning labor standards

• 5.5(a)(10) - Certification of eligibility
This presentation is intended as general information only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The Federal Register and the Code of Federal Regulations remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.