Davis-Bacon Investigation Procedures
Davis-Bacon
Investigation procedures

- Reorganization Plan No. 14 of 1950
- Davis-Bacon (DB) Labor Standards Contract Stipulations
- Specific Steps in Conducting DBA/DBRA/CWHSSA Investigations
- Conclusion of Investigation
- Report Writing
- The Hearing Process
Reorganization Plan No. 14 of 1950

- DOL Functions/Responsibilities
  - Determining “prevailing wages”
  - Issuing regulations and standards to be observed by contracting agencies
  - Perform oversight function and has independent authority to conduct investigations
Reorganization Plan No. 14 of 1950

Contracting agencies have day to day enforcement responsibility for:

- Contract Stipulations
- Wage Determinations
- WH-1321 Poster
- Reviewing certified payrolls
- Employee interviews and investigations
- Forwarding refusal-to-pay and/or debarment consideration cases to WHD for appropriate action
- Enforcement reports
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”
- Regulations, 29 CFR 1, 3, and 5
Davis-Bacon Labor Standards
(29 CFR 5.5)

- Minimum wages (MW’s)
- Submission of certified payroll records
- Withholding
- Apprentices
- Maintaining basic payroll records
- Trainees
Davis-Bacon Labor Standards

- Copeland Act (CA) compliance
- Subcontracts
- Contract termination and debarment
- Rulings and interpretations
- Disputes
- Certification of eligibility
Preliminary Steps in Conducting Investigations

- Obtain the following information:
  - Copy of labor standards clauses in contract
  - Copy of Davis-Bacon WD in contract, including any instructions for multiple schedules
  - Copies of certified payrolls
  - Employer identification number
The Investigation Process

- Initiate contact with employer
- Examine certified payrolls
- Examine basic payroll records
The Investigation Process (Cont’d.)

- Check for compliance with apprenticeship and/or trainee requirements

- Determine if a conformance is necessary
Employee Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview statements should contain:
  - Place and date of interview
  - Name and address of employer/employee
  - Employment status and classification
  - Alleged violations
Determining Compliance

- Determine compliance with prevailing wages, including FB’s
- Determine compliance with CWHSSA
- Compute any back wages and liquidated damages
Computing Liquidated Damages under CWHSSA

Liquidated damages are computed at $10 per day per CWHSSA violation. Example:

<table>
<thead>
<tr>
<th>S</th>
<th>M</th>
<th>T</th>
<th>W</th>
<th>T</th>
<th>F</th>
<th>S</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>10</td>
<td>12</td>
<td>13</td>
<td>9</td>
<td>8</td>
<td>3</td>
<td>55</td>
</tr>
</tbody>
</table>

15 weekly hours of overtime were worked on three calendar days (Thursday, Friday, Saturday) without the payment of overtime. Liquidated damages computed @ $30.
Withholding of Funds

- In refusal-to-pay cases, contracting agency can withhold funds to cover back wages.

- Contracting agency can withhold funds from other contracts which have same prime contractor (cross-withholding).

- Contracting agency should immediately notify WHD if contractor may be filing for bankruptcy.
Computing Back Wages (40-hour workweek)

Contractor employs an Electrician on the site of the work 40 hours a week. WD calls for a prevailing wage of $14.50 ($12 + $2.50 in FB’s). Employee paid $13 ($10.00 plus $3.00 in FB’s), which is the WD prevailing wage for Painters.

<table>
<thead>
<tr>
<th>Prevailing Wage</th>
<th>$14.50  \times 40 \text{ hours} = $587.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee paid</td>
<td>$13.00 \times 40 \text{ hours} = $527.00</td>
</tr>
<tr>
<td>Back wages per employee</td>
<td>$60.00</td>
</tr>
</tbody>
</table>
Conclusion of Investigation

Final Conference Procedure

- Inform contractor of investigation findings
- Detail steps to eliminate violations
- Consider additional evidence that may impact on findings (e.g., conformance)
- Request payment of back wages and any liquidated damages under CWHSSA

Contact WHD if no agreement
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 related Acts
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA
Debarment Criteria

Debarment is considered when a contractor has:

• Submitted falsified certified payrolls
• Required “kickbacks” of wages or back wages
• Committed repeat violations
Hearing Process
(29 CFR Parts 6 and 7)

- Refusal to pay cases are resolved pursuant to 29 CFR 5.11
  - If factual issues in dispute, WHD notifies contractor of findings and offers opportunity to request a hearing before an Administrative Law Judge (ALJ)
  - If only questions of law in dispute, WHD issues ruling letter that may be appealed to DOL’s Administrative Review Board (ARB)
- If debarment action initiated, contractor may request a hearing pursuant to 29 CFR 5.12
Administrative Review Board

- Members appointed by the Secretary of Labor
- Hears appeals of ALJ decisions
- Acts on petitions to review final rulings of WHD Administrator on coverage interpretations, and WD matters
- Appeals may be in the form of an oral hearing in Washington, D.C., but typically are by review of record in closed session
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