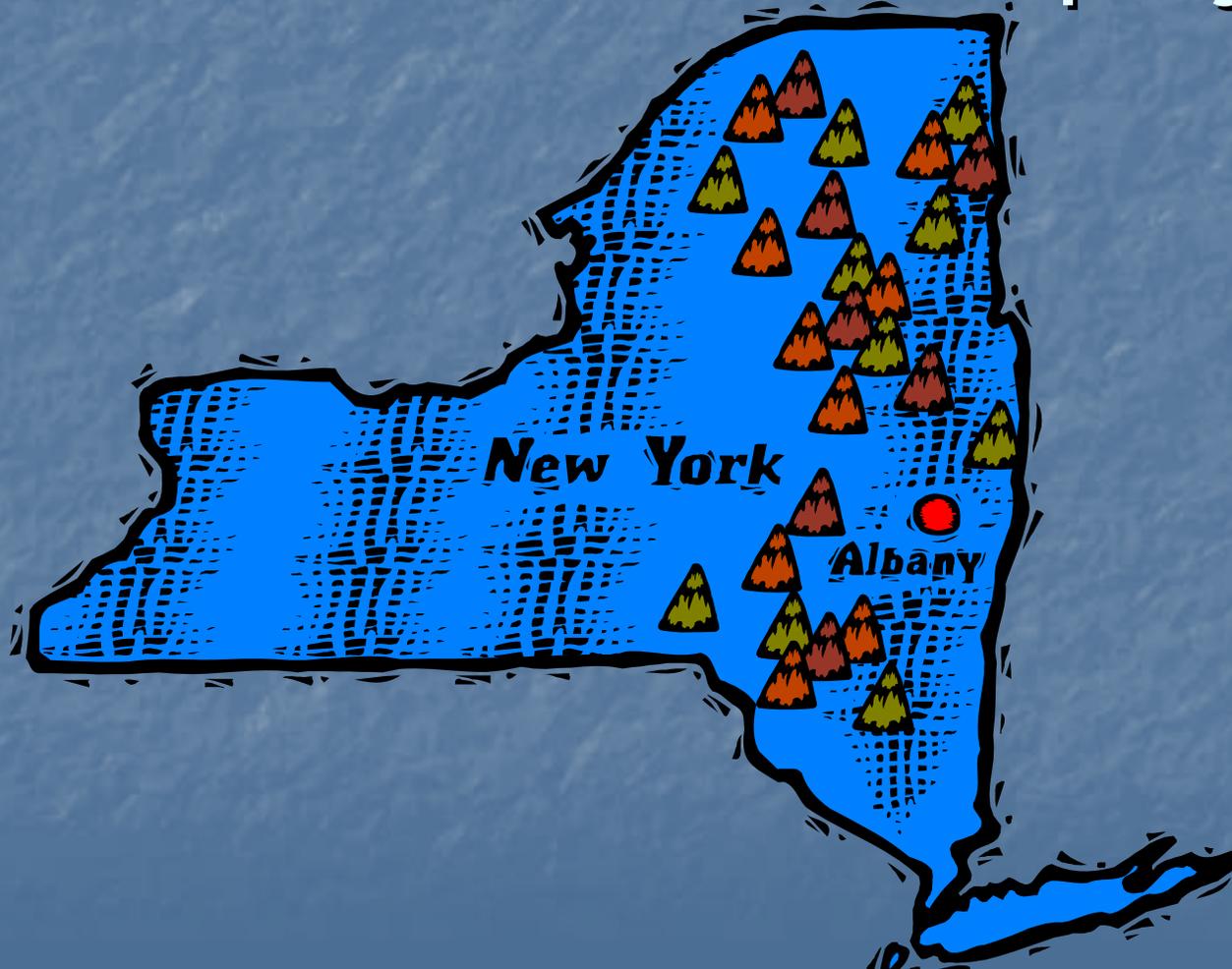
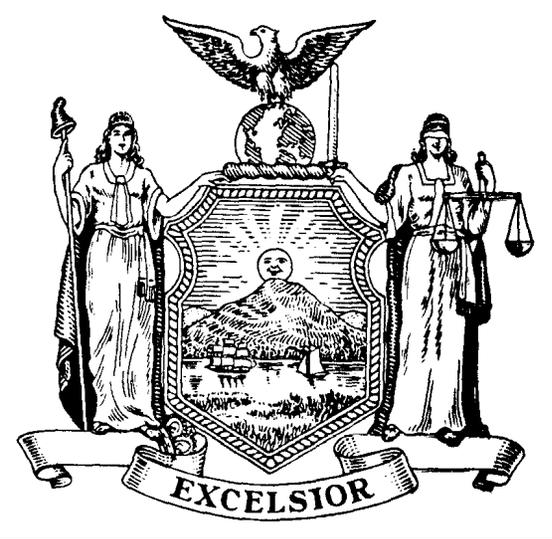


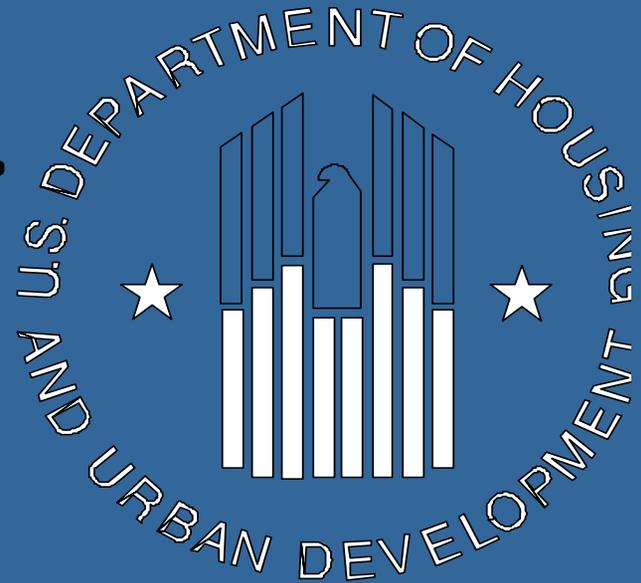
Federal Labor Standards for New York State DHCR projects





What we do...

and why.



Developers, Consultants and Staff:

This session is intended to help developers, consultants to developers, and those agency staff responsible for projects which may incur federal labor regulations, to recognize that we work together as partners in meeting the obligations, and avoiding the pitfalls, of Federal Labor Regulations.

Labor Standards & The Development Process

- **Predevelopment Issues** – Understand the issues and planning to avoid labor problems and budget problems later in the process.
- **Preconstruction Issues** – Undertake the proper steps to make sure labor regulations and procedures are in place to ensure compliance during the construction process.

Labor Standards & The Development Process (con't)

- **Construction Period** – Follow through on the procedures to ensure proper posting, payroll, monitoring and compliance procedures are followed.
- **Construction Completion and Post Construction Period** – Gather payroll, certifications, and documentation and records retention requirements.

Proper Planning is the Key

- The predevelopment process including the architectural design, project approvals and financing process take longer than the actual construction itself
- The same is true for Labor Standards compliance. The predevelopment and perconstruction phase are the most important part of a successful project.

Labor Standards 101

Three Key Federal Statutes

- Davis-Bacon (and Related Acts)
- Contract Work Hours and Safety Standards Act
- Copeland Act



The Davis – Bacon Act



John Davis



Robert Bacon

Davis Bacon Related Acts

- 'Davis Bacon' applies to contracts directly funded through federal agencies.
- Other Federal funding programs have had Labor Standards requirements added on to enabling legislation.
- For those programs, US Department of Labor has HUD pass through to the local funding agency (NYS DHCR, a county, city, etc.) enforcement through the "Davis-Bacon Related Acts".

Davis-Bacon Act

- Enacted 1931, amended 1935 & 1964
- Federal construction contracts over \$2,000
- The Act is "site-based"
- Includes alteration, repair, painting & decorating

Davis-Bacon Act

- Applies to all laborers & mechanics
- Requires payment of \geq prevailing wages
- Requires weekly payment of wages
- Usually applied through "Related Acts"

Contract Work Hours and Safety Standards Act (CWHSSA)

- Enacted 1962
- Overtime for all contract work > 40 hrs/week
(No longer applies after 8+ hours/day)
- Applies to contracts > \$100,000
- Liquidated damages apply to violations
(\$10/day/violation)

CWHSSA

- Paid at 1½ times the regular rate of basic pay plus the straight-time rate of fringe benefits
 - Straight time: \$20 + \$5
 - Overtime: \$30 + \$5

Copeland Act



- Enacted in 1934
- Prohibits “kickback” of wages and/or back wages
- Requires contractors on DB/DBRA covered projects to submit a certified payroll with a signed “statement of compliance” each week



Copeland Act

- Regulates payroll deductions from wages:
 - FICA, federal and state income tax withholding
 - Bona fide prepayment of wages
 - Court ordered payments, fringe benefit plans, etc.

The Regulatory & Enforcement Process

The US Dept Of Labor "Regs"

CFR - Title 29

- Pt 1 – Determination of prevailing wages
- Pt 3 – Copeland Act requirements
- Pt 5 – Labor standards provisions for contracts
- Pt 6 – Proceedings before DOL's Administrative Law Judges
- Pt 7 – Practice before DOL's Administrative Review Board

Common Labor Standards

“Davis Bacon” Programs:

- **HOME, including LPA;**
- CDBG;
- Housing Choice Voucher Program
- Section 202;
- Section 811;
- HOPE VI;
- Youthbuild;
- Brownfields Economic Development Initiative (BEDI)
- HOPWA;
- **Project Based Voucher Program;**
- HUD Native American housing programs, such as Section 248;
- USDA 515, 516, supplemental grants under Appalachian Regional Develop. Act, Title V Regional (when structured with local housing authorities)

HUD Office of Labor Relations

- HUD pursuant to USDOL & Statute, establishes regulations and forms for funded programs and agencies.
- HUD has two OLR regions in NYS: (Upstate- Buffalo/Downstate-NYC)
- HUD has established local agency requirements and forms.

DHCR/HTFC

- HUD places responsibility upon DHCR/HTFC to enforce Labor Regulations on the developers and contractors participating in its programs.
- DHCR has its own labor standards compliance office in Albany, within the DHCR Technical Services Unit.

Labor Regulations Summary

- Three sets of laws (Davis Bacon, Copeland, Contract Work Hours & Safety)
- These three sets of laws are enforced by USDOL, pursuant to CFR Title 29, Parts 1,3, & 5)
- USDOL (and Statutes) require subagencies to enforce labor regs on funded entities

Pre-Development



Predevelopment Step #1

- Determine if your project may be subject to Federal Labor Standards, particularly Federal "Davis Bacon" Wage Scale

HUD Funding Streams of Primary Concern for DHCR/HTFC Projects/Programs

- [HOME](#): National Affordable Housing Act of 1990 (NAHA); Section 286
- [Project Based Vouchers](#): Quality Housing and Work Responsibility Act of 1998, Section 545
- [CDBG \(UDAG/EDI/BEDI/Sec 108\)](#): Housing and Community Development Act of 1974, as amended (HCDA); Section 110

HOME, Project Based Vouchers and CDBG:

Preconstruction issues



HOME: Factors of Applicability

- ...affordable housing with 12 or more units assisted with funds made available under this subtitle...
- ...Any contract for the construction of affordable housing with 12 or more units (can be on more than one site). BE CAREFUL WITH MULTISITE HOME LPA PROJECTS WITH THE SAME OWNER!!!
- ...Sweat equity (is OK)

See also HOME Regulations: 24 CFR §92.354

<http://www.gpoaccess.gov/cfr/retrieve.html>

HOME: Factors of Applicability

- Standard for applicability is *construction assisted*, not construction financed. This creates a broad application
- Soft costs will trigger Davis-Bacon
- HOME applicability “taints” all units of a development, if you have a project of more than 11 units and any HOME funds are involved in any way, consult your Agency Labor Representative. Assume nothing!!!!!!
- Volunteers are exempt

Project Based Vouchers: Applicability

- Even though project based vouchers (PBV) do not provide construction or soft cost dollars, they can trigger Federal Labor Standards because the project is “Federally Assisted”
- Prevailing Wage Scale applies with 9 or more units are assisted by project based vouchers
- Portable vouchers do not trigger prevailing wage

Project Based Vouchers: Applicability

- For more information about Project Based Vouchers:

HUD:

www.hud.gov/offices/pih/programs/hcv/project.cfm

DHCR:

www.dhcr.state.ny.us/oed/nofas/rfp01.htm

CDBG: Factors of Applicability

- ...construction work financed...
- ...in whole or in part...
- ...all laborers and mechanics employed by contractors or subcontractors...
- ...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

CDBG: Factors of Applicability

- Construction contracts > \$2,000
- Soft costs generally do not trigger Davis-Bacon
- Force account construction work is generally exempt (not so for PHAs)
- Volunteers are exempt (more later)

Predevelopment Step #2

- Determine the type of construction
- Serves as a basis for prevailing wage classification

The 4 Types of Construction



Types of Construction

- Heavy - those projects, generally public works, which cannot be classified as Building, Residential, or Highway Construction

Often distinguished on the basis of the characteristics of particular projects such as dredging, water and sewer lines, parks and playgrounds, dams, major bridges, and flood control.

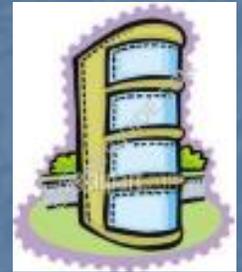
Types of Construction (con't)

- Highway - roads, streets, highways, sidewalks, runways, parking areas, and other paving work not *incidental* to other construction (Discuss a road or parking lot in a housing project)



Types of Construction (con't)

- Residential - single family houses, townhouses, and apartment buildings up to four stories (total stories, not units, is the governing factor)
- Building - sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Also apartment buildings greater than 4 stories (Total stories governs, not stories of residential)



Discussion: Residential Rate as determined by 'Floors':

- For questions regarding # of floors in a residential project consult U.S. Dept of Labor Manual of Operations, pages 26-27



Multiple Classifications:

- On very large, or mixed use projects, different rates on different parts of the same project may be imposed.



Discussion: The US DOL Definition of “Residential” and “Building”

- USDOL All Agency Memorandums 130 & 131: “character similar” ...



Discussion:

What is the US DOL Definition of “Residential” and “Building”?

- **WARNING:** The guidelines contained in All Agency Memoranda 130 and 131 concerning classification of projects are not binding. When the nature of a project is not clear, it is necessary to look at other considerations as well, with foremost consideration given to area practice.

Procedures for Any Project/Program Where a Question of Building Classification Exists

- Seek guidance from your local agency contracting agency or HUD OLR staff if you are considering contracting in an unfamiliar jurisdiction.
- Check on Area Practices.

What is an “Area Practice”?

- Area practice refers to local labor market practices regarding geographic jurisdiction, trades and duties of each trade, and the basis for a job classification and wage determination.
- Example: Wayne County roofing –Overlapping jurisdictions, question of who does roofing - carpenters or roofers?



Area Practice

- Proper classification of workers is guided by Area Practice
- Concept adopted in mid-1970's *Fry Brothers Corp.* decision
- Area Practice is driven by the results of DOL's surveys
- Check w/ DHCR TSU or HUD Labor Relations on Area Practice questions

Counting Units and Allocating to Specific Programs:

- When multiple federal programs are involved and a question of program definitions of units or beds arises, refer these issues to HUD OLR for resolution before determination as to whether Davis Bacon thresholds have been met.
- Units do not add across programs. (10 HOME and 7 CDBG do not necessarily 'add' and invoke DBRA)
- Guidance on these issues has been covered in HUD CPD 98-2 and LR-96-02 included on CD provided with this workshop

Predevelopment Step #3

- Developers need to have a general understanding of contracting and contractor responsibilities.

Developers should be aware of Contractor Responsibilities:



- Prime contractors
- Subcontractors

HOME AND CDBG Labor Provisions: HUD Form 4010

- Each contract subject to Davis-Bacon must contain labor standards (LS) clauses & the applicable wage determination
- Labor Standards clauses describe contractor responsibilities
- Labor Standards clauses provide remedies for noncompliance

Who is the 'prime' or 'general contractor'?

- Construction management and multiple contracts:
- Regs are written around concept of a single general contractor
- Consult with your local agency contracting officer or HUD OLR to determine how to manage multiple contract situations.

Prime Contractor

- Responsible for compliance of all employers engaged on the project
- Subcontractors communicate through prime
- Includes labor provisions in all subcontracts

Prime Contractor

- Submits certified payrolls for its own employees
- Provides subcontractors with forms and guidance
- Ensures interviewer access to employees on site

Subcontractor

- ❑ Prepares & submits certified payrolls each week
- ❑ Instructs any lower-tier subcontractors of responsibilities
- ❑ Reviews wage determination, requests additional classifications
- ❑ Ensures interviewer access to employees on-site

Working Subcontractors

(Labor Relations Letter 96-01)

- All laborers and mechanics are covered *regardless of any contractual relationship alleged to exist*
- Must be paid weekly
- May not certify to payment of own wages (may not sign own payrolls)
 - Exception: Owners of business working with their crew
- Copy Available at Labor Relations Web Site

Apprentices and Workers 101



Different groups of employees may have different rates within the same trade

- Be aware of certain groups which may be treated differently under federal labor regulations.
- Read the "Contractor's Guide" for further information...
- Here are some examples:

Apprentices

- Only qualified apprentices, from the prevailing jurisdiction listed on the wage determination, qualify for apprenticeship rates. Everyone else must be paid the full Davis-Bacon rate.
- Contact your agency's contracting officer and review the "Contractor's Guide" before accepting payrolls with apprentice rates .

Helpers

In this area, helpers are very rare. They are only allowed when:

- Helper duties are clearly defined and distinct from all other workers on a wage determination
- The use of helpers is an established prevailing practice in the area
- The helper is not used as a trainee in an informal training program

Volunteers

- Perform services voluntarily
- Do not receive compensation for services
- May be paid expenses, reasonable benefits, or a nominal fee
- Not otherwise employed at any time on the construction work



Force Account and Prison Workers

- 'Force Account' workers are those employees of the sponsor – the developer – who work for specific amounts of time at the project.
- There is a specific memorandum dealing with the use of prisoners released to work on construction projects.
- In either case, contact your local agency contracting officer or HUD OLR for a specific detailed treatment for your project.

Supervisory: the 20% rule

- As a general rule, an employee who spends the majority of time in a supervisory position at the job site, and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time.
- Clerical staff such as timekeepers; professionals such as architects, engineers; and inspectors and certain utility installers are also exempt.

Demolition and Asbestos

- With CDGB, demolition can be exempt from Davis Bacon under some circumstances
- With HOME, employees engaged in a demolition phase, when development is later contemplated, can be covered by HOME.
- US DOL covers Demolition and Asbestos in All Agency Memorandums 153 187 and 190 and in the Field Operations Manual.

Site of Work

- 29 CFR 5.2(I)(1):

the physical place where the building or work called for in the contract will remain



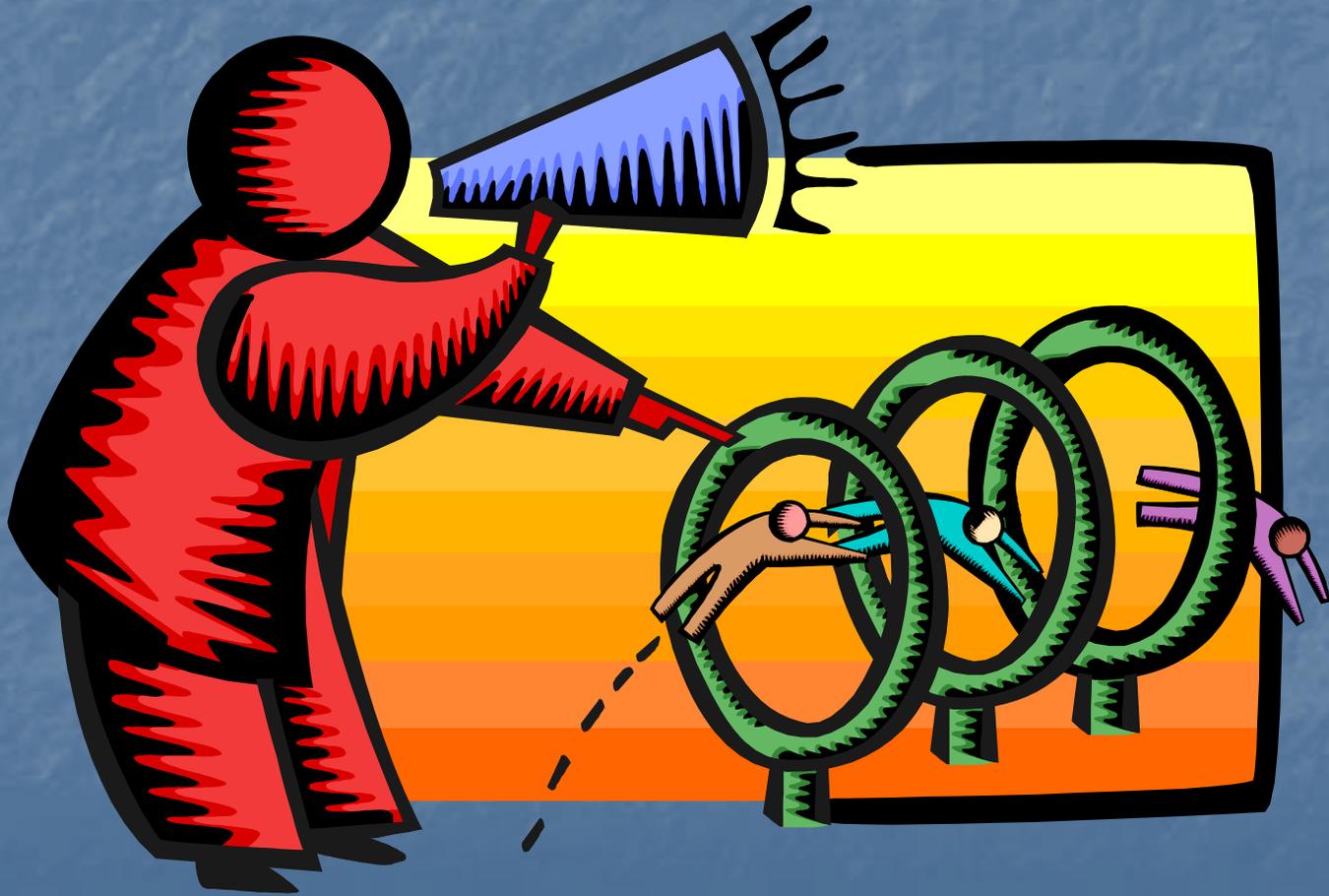
'Site' rulings

- Contact your funding agency's local contracting officer or the HUD OLR office if your project will involve work conducted off the project site.
- Major areas of rulings include truck drivers and 'modular' construction.

Predevelopment Step #4

- Take into account any applicable Federal Labor provisions in developing your project budget

Budgeting



Obtaining Wage Determinations

- <http://www.wdol.gov>

Wage

Determinations

On

Line

.gov



Davis-Bacon Wage Determinations

- Established by geographic area (usually a county or a group of counties)
- Published for the 4 types of construction:
Residential, Building, Highway, Heavy
(classifications may be combined in many areas)
- May be modified periodically
- Must be included in bid documents and contract for construction with appropriate Federal labor standards provisions (such as HUD-4010)

Modifications

- If a wage schedule contains prevailing union jurisdictions, modifications will be published sometime after US DOL receives updated collective bargaining agreements ("CBA").
- Changes are usually posted at least annually.
- You could obtain negotiated residential CBA rates yourself to help budget possible future Davis-Bacon rates.
- The 'Survey' portions of a wage schedule will not change for the life of the survey.

Residential rates incorrect?

- Contact your local agency funding contracting officer and the HUD Office of Labor Relations.

HUD 4230a Conformance rate requests:

- Missing classifications can be estimated from the rate you request for your project, but cannot be guaranteed until approved by US DOL
- GC needs to have a rate for the project locked in before conforming additional classifications.
- Most important question: What does the employer usually pay to workers in the proposed classification?
- Submit requests in writing (proposed classification and locked rate with 4230a)

New Surveys

- When budgeting, check if US DOL Davis-Bacon wage surveys may impact your proposed projects.
- Discussion: What happens to projects in the pipeline when a survey establishes new rates?

Upcoming US DOL surveys:

- US DOL announced a sweeping three year national survey schedule.
- It scheduled 23 NYS counties for survey by end of Federal FY 2005.
- However, it is now FY 2006 and surveys in NYS and elsewhere across the US have not begun.
- Schedules are posted on WDOL.gov
- Once started, a survey window is open for six months, looks back one year past that (for eighteen months total survey period).
- A new Decision may be posted any time after that.

Locking in a Wage Rate

- You can 'lock in' as early as you want in the development process – with a negotiated contract.
- Send a signed Owner-GC agreement, (with the proper exhibits) to the local contracting officer with a description of the proposed project, and site, if submitted before a funding application and the assignment of project identification (SHARS #, etc.)

Are waivers, exemptions or variances granted?

- Waivers and exemptions are almost never granted. Variances are rarely granted. There has to be a showing of very narrow hardships, and that the project will not be built, unless a previous rate, or other narrow relief can be granted by the Secretary of the United States Department of Labor. (There must be proof that there will be no project, and therefore no jobs at all, unless the limited relief is granted.)
- It is suggested that you seek assistance from your agency's local contracting officer or HUD OLR office regarding variances.

Multi-agency federal funding locks

Question: With multi program and multi agency federal funding who serves as your contracting officer for the purpose of locking in rates, or for reporting purposes?

Multi-agency federal funding locks

Answer:

Generally, the earlier you can lock in a rate, the better. The first federal funding source – even if not the main or largest to provide you with a commitment, can lock in your rate. Later, it may be determined that another agency will serve as the depository for your reports, as lead federal agency. Coordinated by HUD OLR, they will accept the first agencies 'lock' if the project is continuous and uninterrupted.

Wage Determination "Lock-In" Rules



Non-Competitive Bidding:

- Modifications are effective if published before contract award, or start of construction, whichever occurs first

Wage Determination "Lock-In" Rules



Competitive bidding

- Modifications published < 10 days before bid opening may be disregarded if found there is not sufficient time to notify bidders, and a report is made to contract file
- Lock-in at bid opening *provided* contract is awarded within 90 days
- Must update wage determination if contract award is > 90 days

Contractor Eligibility

- Verify prime contractor and all subcontractor eligibility against GSA's Debarment List and
- HUD's LDP list
- Make record of verification to contract file
- On-line access at: <http://epls.arnet.gov>
<http://www.hud.gov/offices/enforce/ecldp.cfm>
(also can be accessed thru USDOL website link)
Use "partial name" button when searching



Pre-Construction



Davis-Bacon runs with GC for project

- Once a Davis-Bacon wage rate has been 'locked' it stays in effect for the duration of the project.
- The Davis-Bacon relationship is between the local funding agency's local contracting officer and the General Contractor.
- Question for discussion: – If the GC is replaced, will the new GC receive a new rate?

The Pre-Construction Meeting

- HUD has determined that Davis-Bacon pre-construction conferences are no longer mandatory. It is nevertheless important to meet, or at least knowledgably discuss the project in depth with the funding agency's local contracting officer early in the development process.
- Confirm the operative Wage Determination. Do not assume that the project will be considered residential – confirm floor count, unit size, program restrictions, etc.

Pre-Construction Conference Items For Agency Staff Consideration

1. Has the Developer/GC completed the process to lock-in a rate, and if so the proper residential and/or building rate schedule?
2. Does GC have trained DB staff engaged?
3. Is any training required before first payroll draw?

Pre-Construction Conference Items For Agency Staff Consideration

4. Is staff familiar with most current reference materials and DHCR/HUD contracts?
5. Does GC have a payroll review system, adequate filing system and understand DHCR payroll submission procedures and schedules?
6. Has GC designated staff to emplace 11x17 Davis-Bacon poster and rate schedule at site?

Pre-Construction Conference Items For Agency Staff Consideration

7. Are there specific union practices or rules which apply to this area and impact this project?
8. Has the Davis-Bacon rate schedule and labor relations boilerplate been included in all bid specifications/contracts?
9. Do all subs and sub/subs understand rates and conditions carry through to them?

Pre-Construction Conference Items For Agency Staff Consideration

10. Are there any additional external contracts or workers (e.g. guard service) that require monitoring and reports?
11. Are there any components that could be separated from the GC contract and excluded from regulation, such as the final cleaning? Is it advisable to do so?
12. Does Developer have monitoring system in place to deal with potential payroll defaults by GC or subs?

Construction



Construction Discussion Points

- 1. Start of 'beneficial construction' re: lock in method.
- 2. Was prime contractor involved in 'start of construction'?
- 3. What documentation should you have to satisfy US Department of Labor?

Construction Discussion Points

- 4. Establishing a payroll draw schedule and GC retentions against 347/348 payroll reports.
- 6. Protecting developer and GC by conducting HUD-11 surveys and HUD 5282 forms.
- 7. When to pull the plug: bounced sub payroll checks, missed payrolls, etc.

Construction Discussion Points:

- 8. When developers should call DHCR, HUD or US DOL regarding inquiries or investigations.
- 9. Other investigatory issues.
- 10. Documents is not subject to Freedom of Information – federal payrolls

'Construction' is defined by...

- For Davis-Bacon purposes, we need to follow US DOL practice and accept their definitions and triggers as to 'construction'.
- For Davis-Bacon purposes, you will be in the 'construction' phase if you achieve one of two triggers.

Start of 'beneficial construction' as one possible lock in method.

- US DOL will look to type of work done on site – and who it was done by – to determine whether there was a 'beneficial start of construction' such as access roads, digging of footings, or if just soil tests, borings, were accomplished.

Was prime contractor involved in 'start of construction'?

- If work was done under control of eventual GC, or by GC, a stronger case is established.
- If so, take care that a DB file was opened and note that DBRA wages were paid for the early work, and reports eventually filed.

What documentation satisfies US DOL as to 'start of construction'?

- The **gold standard** is an **AIA 1997 A101** Owner-GC agreement with the **labor standards exhibit** for the DBRA federal program, such as the **HUD-4010 form** for the **HOME** and **CDBG** programs, and the **residential wage rate** in effect the day the agreement is signed as an exhibit. Check WDOL.gov for the current rate.



What documentation satisfies US DOL as to 'start of construction'?

- The next best 'lock', is contemporaneous documentation, filed with your funding agency, of start of '**beneficial construction**', including contracts, on-site inspection reports, photos, etc.



Establishing a payroll draw schedule and GC retentions against 347/348 payroll reports.

- Establish a schedule of retentions against receipt of certified payroll reports.
- In addition, if employees of a GC or sub on your project are known to be owed on a payroll, take steps to assure that these workers are promptly paid at least your guaranteed share of their paychecks.

Protection: HUD-11 and 5282

- If your local contracting officer is able to visit on a regular basis, they will conduct surveys utilizing the HUD-11 form.
- If not, developers can have staff trained and designated to act on behalf of the agency and on a regular basis, survey all skilled trades on the work site, and submit these survey forms with the payrolls.
- Surveying tends to reduce the likelihood that subcontractor reports and worker responses will differ by any considerable amount. The GC payroll staff can cross-check and spot any underpayment problems as they develop.
- HUD-5282's provide a record of who is an authorized signatory at each sub.

Bounced sub payroll checks, missed payrolls, etc.

- The GC will be held responsible by US DOL for defaults or underpayments by any level of sub contractors.
- The Developer in turn will be held responsible for GC defaults...
- Responsibility is for the DBRA minimum, not any promised higher wage level.

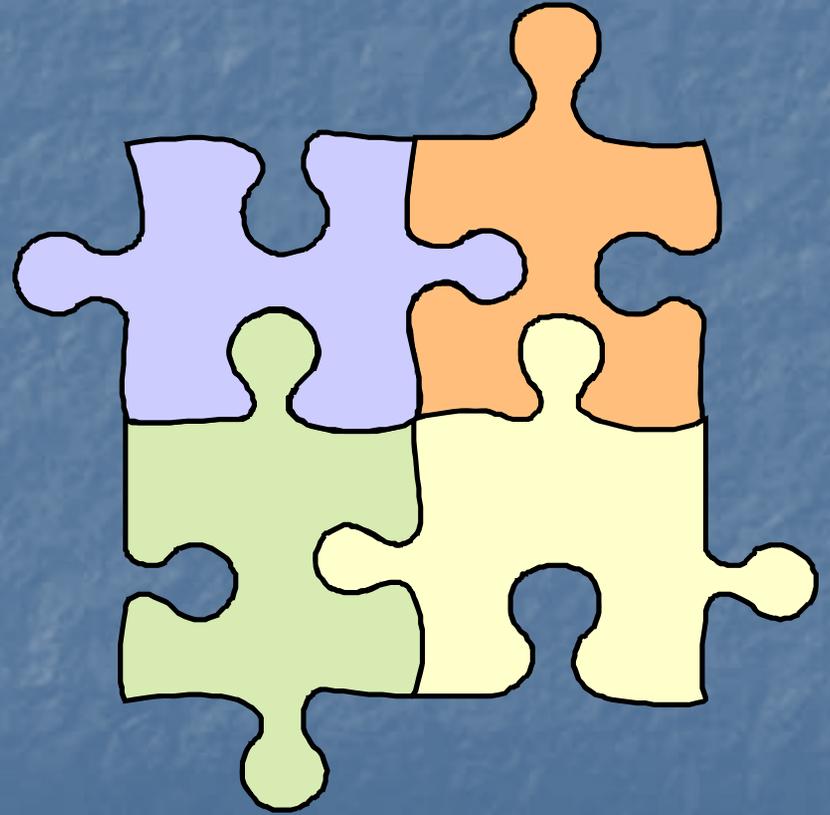
When developers should call DHCR, HUD or US DOL regarding inquiries or investigations.

- Whenever questions or complaints regarding DBRA are received, direct them to the local contracting officer listed on the 11 x 17 poster on the job site.
- You may also contact HUD OLR.
- Either the local agency contracting officer or HUD OLR will refer serious violations and wage recovery complaints to US DOL.

Other Investigatory Issues (Protect Yourself)

- Ensure submission of certified payrolls
- Conduct on-site interviews (HUD-11)
- Check payrolls/related records
- Ensure correction of underpayments
- Have GC maintain records for 3 years after completion

Construction Completion



Construction Completion Discussion Points

- Each sub should have a 'final' payroll, or GC should place note marked 'final' in file.
- GC should file a close out letter with DHCR/HTFC; Davis-Bacon status is checked prior to HOME contract closing.
- Punch list work is covered by Davis-Bacon and should be reported and submitted.
- File retention clock starts three years after the last payroll submitted to TSU was signed.

Post-Construction



Three years...

- The US DOL has received questions about projects, and opened investigations, several years after funded projects have closed.
- A full, up to date file at your funding agency is your best defense against possible adverse findings and penalties.

If the US DOL does have to go looking...

- If money is owed on a previous Davis-Bacon project by a contractor, and you, a new developer, have retained that contractor for a new federal project, US DOL may simply instruct any federal funding source to pay money owed from the new project's budget.

Reference Materials

Course Handouts/References

- ❖ There are three reference sources referred to in this presentation:
 - 1) A CD with various reference materials concerning Federal Labor Regulations.
 - 2) Materials available through the internet, or by contacting the appropriate State or Federal Agency.
 - 3) Labor relations contacts at HUD and DHCR/HTFC

Course Materials on CD: US Dept of Labor Materials

1. USDOL Prevailing Wage Resource Book - A 255 page manual, reads like a textbook, very comprehensive.
2. USDOL Manual of Operations, Pages 25, 26, and 27 – Deals with issues such as how to count floors, building classifications, etc.
3. USDOL Field Operations Handbook, Chapter 15 – 53 page document deals with a broad range of D-B issues including applicability, classifications, exemptions, apprentices, work site definitions etc.

Course Materials on CD: US Dept of Labor Materials

4. USDOL All Agency Memorandum 130 –
Discusses building classifications in Prevailing Wage
Scale projects - “Projects of a similar character”
5. USDOL All Agency Memorandum 131 –
Discusses building classifications in Prevailing Wage
Scale projects, clarifies AAM 130

Course Materials on CD: US Dept of Labor Materials

6. USDOL Wage & Hour Publication 1321 – Job Site Poster, Posted on all Prevailing Wage Scale projects.
7. USDOL WH347 /348 – Weekly Payroll Reporting Sheets and Certification for prevailing wage scale projects. A fillable PDF form.

Course Handouts on CD: US Dept of HUD Materials

1. HUD 4010 – Federal Labor Standards

This document is incorporated into all contracts for which Federal Labor Standards apply. Must be part of contract for “lock in” of a wage rate determination.

2. HUD 4230a - Request for Additional Classifications and Rates – Use when a wage determination does not cover all the trades expected on a project.

3. HUD 4230a – Instructions

Contains instructions for preparing HUD 4230a

Course Handouts on CD: US Dept of HUD Materials

4. HUD 4720-1 Project Wage Sheet – Use on a job site to “summarize” wage rates for actual jobs on a prevailing wage job site.
5. HUD 52531b Agreement to Enter into HAP Contract – For project based vouchers, covers requirements of voucher assisted projects.
6. HUD 5282 Appointment of Payroll Supervisor – Used by contractor to appoint officer or employee who is responsible for payroll submissions on prevailing wage scale projects.

Course Handouts on CD: US Dept of HUD Materials

7. HUD Form 11 Employee Interview – Form used to record job site interviews on prevailing wage scale sites to determine statutory compliance.
8. HUD Labor Relations Letter 96-02 Labor Standards on HOME projects – Discusses finer points of labor standards applicability on HOME assisted projects.
9. HUD CPD 98-2 Allocation of Costs in HOME Projects – Deals with project wide costs vs costs attributed to specific units.

Other Reference Materials Available from HUD

1. HUD: Making Davis Bacon Work: A Contractor's Guide to to Prevailing Wage Requirements for Federally-Assisted Construction Projects;
2. HUD: Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies;
<http://www.hud.gov/offices/adm/dds/index.cfm>

Hard copies of these "Making Davis-Bacon Work" guides are also available from HUD's Customer Service Center: (800) 767-7468

Other Reference Materials Available from HUD

3. Forms for Prevailing Wage Scale Projects - <http://www.hud.gov/offices/olr/olrform.cfm> One stop shopping for your HUD prevailing wage project.
4. Labor Relations Letters http://www.hud.gov/offices/olr/olr_lrl.cfm
5. HUD Handbook 1344.1 Federal Labor Standards Compliance in Housing and Community Development Programs (to be replaced shortly by new Handbook 1342); <http://www.hudclips.org/cgi/index.cgi>

Other Reference Materials Available from HUD

6. On-the-Mark! Series

http://www.hud.gov/offices/olr/olr_otm.cfm

7. Instructions for Preparing Payroll Forms 347

<http://www.hud.gov/local/az/news/2005-06-24wh347.pdf> - Tell your contractor about this site.

For a complete reference of HUD materials available on-line in the HUD Labor Relations Library go to:

<http://www.hud.gov/offices/olr/library.cfm>

Other Reference Materials Available from USDOL Website

1. US DOL Davis-Bacon Reference Book 11/2002;
2. US DOL Construction Wage Determination Manual of Operations ("MOH");
3. Various US DOL All Agency Memorandums ("AAM" and 29 CFR 1,3,5,6 and 7;

Links to HUD Office of Labor Relations home page are presented through <http://wdol.gov> (click on library link)

DHCR/HTFC

Reference Materials:

1. DHCR's Federal Labor Standards requirements are now referenced in the DHCR **Design Handbook** and the **Capital Programs Manual**.
2. Updated links to Federal Labor Standards Resources, and Davis-Bacon Related Act forms are found in the DHCR **Unified Funding Reference Materials**.

The above can be accessed at:

<http://www.dhcr.state.ny.us/ocd/uf06.htm>

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Prevailing Wage Scale Scenarios

Scenario #1

- You receive an award for \$400,000 in HOME funding from DHCR for 10 units of a 24 unit project.
- You then obtain \$40,000 in HOME funding from Xerox County...
- The Director of the Xerox County Office of Development, who also runs the X.C. Housing Authority, tells you that you need to apply the \$40,000 to all 24 units, and that NYS Prevailing Wages apply.
- What do you do? What do you cite? (HUD CPD 98-2 HUD LR 96-02)

Scenario #2

- Same scenario as in #1: \$400,000 and \$40,000... but:
- The \$40,000 is now CDBG funds and to be used for acquisition, or legal fees...
- What happens to labor regulation thresholds with a mix of federal programs?

Scenario #3

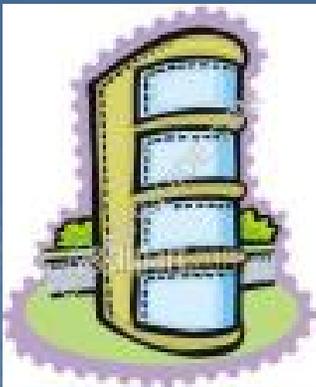
- Developer gets rates from US DOL website, or HUD, not from DHCR or the local county contracting officer partially funding project.
- Developer and Contractor do not list rates or boilerplate (HUD 4010 or similar) in Owner - GC prime contract.
- New US DOL survey is published about the time construction starts...
- Some subs send emails "what rate do we use – old or new" and place emails in their files.
- Workers paid under 'old rates' for this project.
- Two years later a worker for a sub-sub contractor walks into a US DOL field office with pay stubs from a dozen past jobs, including this project...
- US DOL investigates and reads emails at subs.

Scenario #4

- Same Scenario #1, but assume the GC and developer can't find their documentation for 'beneficial start of construction'
- US DOL fines and back wages against GC total \$1.6 million dollars.
- US DOL contacts DHCR, the project's funding agency.
- GC is finishing up another DHCR HOME project for another developer, who we'll call... "Developer #2".
- #2 has paid out 90% of construction costs for a \$3 million project.
- US DOL instructs us to withhold \$1.6 million in HOME due to Developer #2, and remit to US DOL for the underpayments and fines from Project #1 with Developer #1.
- What does Developer #2, DHCR and HUD do?

Scenario #5

- One US DOL website ("access.gpo") gives you one residential rate for a county;
- On the other US DOL website, (<http://wdol.gov>) you find ANOTHER, higher residential rate for that county...
- What do you do?



Scenario #6

- You want to rehab a commercial building.
- You designate the top four stories as residential, and the lower two are community space – to eventually be a YMCA community center.
- You apply to DHCR...
- DHCR TSU is told project is 'four story residential'...
- Project is budgeted under the posted Davis-Bacon residential rate...
- What happens at the pre-construction meeting?



Scenario #7

- The published US DOL residential wage schedule lists the wrong union jurisdictions for a town.
- It also lists the wrong wages, compared to a copy of the union's residential CBA you actually have in hand.
- The latest 'mod' also just simply drops listings for unionized plumbers, electricians and carpenters.
- You have six months to go before you need to go out to bid.
- You have three months to go before you go out to bid.
- You have six weeks to go before you go out to bid.
- You have three weeks to go before you go out to bid.
- What can you do?
- Who do you contact?
- Use HUD 4230a

Scenario #8

- You fire the GC in middle of project.
- Work stops.
- New GC is to be hired.
- US DOL D-B rates changed three days ago.
- What rate has to be used...
- Competitive bid?
- Non-competitive?

Scenario #9

- Your contracting officer sends you a Davis-Bacon rate for the wrong county, or signs off on a owner-GC agreement with the wrong rate or residential/building classification.
- Someone complains to US DOL.
- A US DOL field officer determines a mistake was made...
- Before construction starts...
- During construction...
- One year after final loan closing...
- What happens?

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