

Building California's Future with Public Works Projects:

A Prevailing Wage Training Seminar for Contractors



January 21, 2010

Public Works Projects July 2010 through 2011

- Total projects estimated statewide: 5,860
 - ❖ State agencies: 485 projects
 - ❖ Counties: 1535 projects
 - ❖ Cities: 1900 projects
 - ❖ School Districts: 990 projects
 - ❖ Special Districts: 950 projects

■ \$32,930,483,538

❖ Estimated expenditures for public works projects throughout California

*Department of Finance

Session 1

Availability of New Federal & State Stimulus
Funds for Public Works in California:
What Contractors Need to Know

Presented by: Gary O'Mara & Rebecca Clark

Session 1: Davis-Bacon Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Fringe Benefits
- Federal contracts: PCA interaction with DBA

Session 1: Laborers & Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards

Session 1: Laborers & Mechanics

- Does not include:
 - ❖ Timekeepers, inspectors, architects, engineers
 - ❖ Bona fide executive, administrative, and professional employees as defined under FLSA
- Working foremen are generally non-exempt
 - ❖ Must be paid the prevailing rate for the classification of work performed if not 541 exempt

Session 1: Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work”
- A three-part definition applies to determine the scope of the term “site of work”

Session 1: Truck Drivers

- Truck drivers are typically covered by federal prevailing wage.
- When truck drivers are not covered by federal prevailing wage

Session 1: Owner Operators

- *Bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck) are not covered under federal law.
- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

Session 1: Wages & Fringe Benefits

- The term “wages” or “prevailing wages” includes:
 - ❖ The basic hourly rate (BHR)
 - ❖ Contractor contributions *irrevocably* made to trustee or third party pursuant to a bona fide fringe benefit fund, plan, or program
 - ❖ The rate of costs the contractor reasonably anticipates in providing bona fide benefits where certain conditions are met

Session 1: Interaction Among Government Contract Laws

- Federal contracts requiring PCA & DBA
 - ❖ Covered contract has **more than incidental** amount of construction work
 - ❖ Federal prevailing wage applies to construction work
 - ❖ Construction includes
 - “construction, alteration and repair, including painting and decorating”

Session 1: Interaction Among Government Contracts Laws

■ Example 1

- ❖ Contract for supply of security system

Davis-Bacon applies to:

- Replacement of existing conduit,
- Laying cable, and
- Tearing out and replacing walls

Session 1: Interaction Among Government Contracts Laws

■ Example 2

- ❖ Contract for supply and installation of modular furniture

Davis-Bacon applies to:

- 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.

Session 1: Interaction Among Government Contracts Laws

■ Example 3

❖ Lighting retrofit contract for supply and installation of energy-efficient lighting fixtures:

- Applies to installing new ballasts and/or lighting fixtures.

Session 1: American Reinvestment & Recovery Act of 2009 (ARRA) Overview of ARRA

- Signed into law by President Obama on February 17, 2009
- Appropriates substantial funding for
 - ❖ Construction, alteration and repair of federal buildings
 - ❖ Infrastructure projects such as roads, bridges, public transit, water systems, and housing
 - ❖ Various activities that federal agencies may contract out for service employees to perform

Session 1: Labor Standards Coverage on ARRA Funded Projects

- Davis-Bacon requirements apply to:
 - ❖ Federal contracts funded by ARRA
 - ❖ Most ARRA-assisted construction projects
- Reorganization Plan No. 14 of 1950 gives:
 - ❖ Federal agencies responsibility to ensure that laborers and mechanics are paid at least the prevailing rates established by DOL
 - ❖ DOL has regulatory authority and oversight responsibility and can investigate compliance

Session 1: ARRA Labor Standards Implementation

- Federal agencies must:
 - ❖ Ensure that their bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with Federal Acquisition Regulations
 - ❖ Generally, ensure that recipients of assistance funded by ARRA appropriations require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the Davis-Bacon prevailing wages

Session 1: ARRA Division B

- Requires application of prevailing wage requirements to projects financed with certain tax-favored bonds
 - New, clean, renewable energy bonds
 - Qualified energy conservation bonds
 - Qualified zone academy bonds
 - Qualified school construction bonds
 - Recovery zone economy development bonds
- As defined in relevant Internal Revenue Code provisions
- If issued after ARRA enactment (Feb. 17, 2009)

Session 1: DOL ARRA Guidance

- All Agency Memorandum No. 207, dated May 29, 2009, provides DOL basic guidance
- Advisory letters, such as those issued to the Department of Energy and Department of Interior, provide further guidance

Session 1: WHD ARRA Website & HUD Clarification

- The Wage and Hour Division has established a special ARRA website:
www.dol.gov/whd/recovery
- Certain specific HUD programs affected by a provision in the Supplemental Appropriations Act of 2009, enacted on June 24, 2009

Session 1: Clarification on DB Applicability to HUD Programs

- Supplemental Appropriations Act of 2009 applies to the same statutory provisions applicable to non-ARRA funded assistance under specific programs to ARRA funded assistance under those programs
- Previously applicable thresholds apply to ARRA projects funded under:
 - ❖ CDBG, Public Housing, and Native American Housing

Session 1: Clarification on DB Applicability to HUD Programs

- ARRA funding not affected by section 1205 of the supplemental appropriations act:
 - ❖ Assisted Housing Green Retrofit
 - ❖ Lead Hazard Reduction/Healthy Homes Program
 - ❖ HUD's tax credit assistance program

Session 2

How Contractors Can Locate &
Understand Applicable Prevailing Wage
Rates for Every Public Works Project

Presented by: Gregory Govan & Tim Stahlheber

Session 2: Prevailing Wage

- Laws, regulations, and the methodology for determining the prevailing rate
- Definitions and other information

Session 2: Prevailing Wage

- Navigating the DIR/DLSR web page
 - ❖ Main menu: locating a journeyman determination
 - ❖ Statewide determinations (index)
 - ❖ Prevailing wage determination – select Iron Worker

Session 2: Prevailing Wage

- Collective bargaining agreement provisions – select Iron Worker craft
 - ❖ Holiday
 - ❖ Scope of work
 - ❖ Travel and subsistence

Session 2: Prevailing Wage

- Locating a sub trade – select Ventura County sheet
 - ❖ Issue & expiration dates
 - ❖ Overtime requirements

Session 2: Prevailing Wage

- Predetermined increases superseded
 - ❖ Effective dates & footnotes
 - ❖ Modifications

Session 2: Prevailing Wage

- Select a county at step five Shift differential pay rates from drop down menu
 - ❖ Shift pay determinations
 - ❖ Shift provisions

Session 2: Prevailing Wage

- Special determinations
- Petition to review
- Residential Prevailing Wage
Determinations available on DLSR web
page

Session 2: Prevailing Wage

- Wage survey for residential construction crafts in Central Valley Counties
- Important notice
- Frequently asked questions

Break

Session 3

Apprenticeship Requirements Under
the Prevailing Wage Laws & How
Contractors Can Comply

Presented by: Pacia Parker

Session 3: Apprenticeship Requirements

- DAS Public Works Information

<http://www.dir.ca.gov/DAS/PublicWorksForms.htm>

Session 3: Apprenticeship Requirements

- Apprenticeship Program Search

<http://www.databases/das/aigstart.asp>

Session 3: Apprenticeship Requirements

- Apprenticeship Certification for Public Works

<http://www.DAS/appcertpw/AppCertSearch.asp>

Session 3: Apprenticeship Requirements

- Training Funds Certification

<http://www.dir.ca.gov/CAC/trainingfund/Tfsearch.html>

Lunch

Session 4

How Prevailing Wage Requirements
Are Enforced: What Every Public
Works Contractor Should Know to
Avoid Liability Under California Law

*Presented by: Robert Roginson, David Cross,
John Cumming & Susan Nakagama*

Session 4: Who Does the Law Protect?

- All “Workers” Employed on Public Works
 - ❖ Includes employees, independent contractors, partners, sole proprietors, owner operators

Session 4: What Must Public Works Contractors Do to Comply with the Law?

- Maintain and Furnish Records
- Pay the Prevailing Rate to All Workers
- Comply with Apprenticeship Requirements

Session 4: What Are Certified Payroll Records & Why Should I Care?

- What Information Is Included
 - Name
 - Address
 - Social security number
 - Work classification

Session 4: What Are Certified Payroll Records & Why Should I Care?

- What Information Is Included
 - Straight time & overtime hours worked
 - Actual wages paid
- Certification

Session 4: Certified Payroll Records

- DIR Form A – 1 - 131
- Electronic or Alternative Forms
- Statement of Employer Payments

Session 4: Certified Payroll Records

- Responding to Requests
 - From Awarding Body, DAS or DLSE
 - From the public
- How & When
 - 10 working days

Session 4: How Does DLSE Enforce the Law?

- Conduct Investigations
 - ❖ Investigate complaints from workers, monitoring agencies, contractors and awarding bodies

Session 4: How Does DLSE Enforce the Law?

- Conduct Investigations
 - ❖ Obtain relevant documents (certified payroll records, contract documents, inspector logs, prevailing wage determinations, bond information)
 - ❖ Prepare audits and findings

Session 4: How Does DLSE Enforce the Law?

- Issue and serve Civil Wage Penalty Assessments (“CWPAs”)
- Defend CWPAs in Administrative Review Proceedings and in Court

Session 4: How Does DLSE Enforce the Law?

- Collect and Disburse Wages And Penalties
- Debarment Proceedings
- Labor Commissioner Approval of Forfeiture Requests from Approved Labor Compliance Programs

Session 4: How Does DLSE Enforce the Law?

- Debarment

Session 4: Labor Compliance

- Labor Compliance Programs (“LCPs”)
 - ❖ Established under Labor Code §1771.5
 - ❖ Approved by Director of Industrial Relations
 - ❖ Governed by Regulations at 8 C.C.R. §16421-16439

Session 4: Labor Compliance

- Enforce State Prevailing Wage Laws Consistent with Practice of Labor Commissioner [DLSE]
- Fourteen Statutes Require LCPs

Session 4: Labor Compliance

- LCP Reporting Responsibilities
 - ❖ Annual reports
 - ❖ Project reports
 - ❖ Request for Approval of Forfeiture – must be served on affected contractor and subcontractor

Session 4: Labor Compliance

- Laws and Regulations Enforced by LCPs:
 - ❖ Prevailing wage requirements of Labor Code, including sections 1771, 1774, 1775 [Violations and Penalties], 1776 [CPRs], 1777.5(m) [Training Fund], and 1811-1815 [P.W. Overtime]

Session 4: Labor Compliance

- LCPs do not enforce:
 - ❖ Apprenticeship violations other than prevailing wage
 - ❖ Other State labor laws
 - ❖ Some LCPs may enforce federal or local laws or contract requirements - outside of jurisdiction of DIR

Session 4: Labor Compliance

- Review of Certified Payroll Records
 - ❖ Withholding for delinquent/inadequate CPRs
- Confirmation of CPRs
- Site Visits

Session 4: Labor Compliance

- Investigation of Complaints and Enforcement
- DLSE Approves Forfeitures
- LCP Issues Notice of Withholding of Contract Payments

Session 4: Labor Compliance

- Appeal and Hearing Under Labor Code §1742 [Same Procedure as DLSE Cases]
- Forms And Resources (See Website)

Break

Session 5

The Nuts & Bolts of the Administrative Review Process for Public Works Contractors Who Receive An Assessment (Mock Proceedings)

Presented by: David Cross, Anthony Mischel, Sherry Gentry, Lorna Espiritu, Doreen Peters, & Rachel Farmer

Session 6

Changes to Public Works Project Monitoring & Compliance

*Presented by: Nance Steffen &
John Cumming*

Session 7

Q & A – Any Topic Regarding
Prevailing Wage Compliance of Interest
to Public Works Contractors

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