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Federally Funded Construction and the Payment of Locally Prevailing Wages

Introduction

Beginning in the 1930s, Congress has enacted multiple statutes that establish minimum labor standards for various classes of workers. Some of these standards apply broadly to most employers (e.g., the Fair Labor Standards Act and the National Labor Relations Act), while others apply more narrowly to private employers that enter into contracts with the federal government. The latter group covers federal contracts for construction work or the purchase of goods or other types of services. This In Focus examines the federal law that prescribes labor standards for federal construction contracts—the Davis-Bacon Act—and a series of related statutes that incorporate the Davis-Bacon Act standards into their provisions.

The Davis-Bacon Act

The Davis-Bacon Act (DBA), 40 U.S.C. §§ 3141-3148, requires government contractors to pay locally prevailing wages to laborers and/or mechanics employed on certain federally funded construction projects. Enacted in 1931, the DBA reflects Congress’s interest in giving the government “the power to require its contractors to pay their employees the prevailing wage scales in the vicinity of the building projects.” S. Rep. No. 71-1445, at 1-2 (1931). Pursuant to the DBA, the Secretary of Labor calculates the prevailing wages by reviewing wages paid to corresponding classes of laborers and mechanics employed on projects of a similar character to the contract work in the city, town, village, or civil subdivision of the state in which the work is performed. See 29 C.F.R. § 1.3. The DBA defines the term “wages” to include not only a basic hourly rate of pay, but amounts related to health, retirement, and other fringe benefits. See 40 U.S.C. § 3141(2).

The DBA requires government contractors to pay locally prevailing wages when these conditions exist: (1) there is a contract in excess of \$2,000; (2) the United States or the District of Columbia is a party to the contract; and (3) the contract is for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the United States or the District of Columbia. 40 U.S.C. § 3142(a). Contractors are generally required to pay locally prevailing wages to laborers and mechanics when a construction project satisfies these three conditions.

The government may terminate a contract if it discovers that a contractor has not paid the required prevailing wages. *Id.* § 3143. Following termination, the government may

contract to complete the work and hold the original contractor liable for any excess costs incurred. *Id.*

The Comptroller General of the United States is required to distribute to all federal agencies a list of individuals or firms that have failed to pay laborers and mechanics a prevailing wage under the DBA. *Id.* § 3144(b)(1). The federal government may not award a contract to the persons or firms appearing on the list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years after the date of publication of the list. *Id.* § 3144(b)(2).

Davis-Bacon “Related Acts”

CRS has identified forty-eight statutes that authorize financial assistance for construction projects through grants, loans, and other funding mechanisms to which Congress has added prevailing wage provisions. These laws, described as Davis-Bacon “related acts” because of their prevailing wage requirements, involve construction in areas such as transportation, housing, air and water pollution reduction, and health. The related acts’ prevailing wage requirements apply when federal financial assistance is provided for construction, but the federal government is not a contracting party or a public building or public work is not involved.

In general, the prevailing wage provisions of the various related acts are phrased similarly and refer to the wages prescribed by the Secretary of Labor under the DBA. For example, section 1702(k) of the Energy Policy Act of 2005, 42 U.S.C. § 16512(k), states, in relevant part: “All laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by a loan guaranteed under this subchapter shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40.” The following is a list of the remaining Davis-Bacon related acts, at this writing, with similar language:

1. Farm Security and Rural Investment Act, § 9003(f); 7 U.S.C. § 8103(f)
2. Housing Act of 1959, § 401(f); 12 U.S.C. § 1701q(c)(3)
3. National Housing Act, § 212; 12 U.S.C. § 1715c
4. Tennessee Valley Authority Act, § 3(b); 16 U.S.C. § 831b(b)

5. National Foundation on the Arts and the Humanities Act, §§ 5(k), 7(j); 20 U.S.C. §§ 954(n), 956(j)
6. General Education Provisions Act, § 439; 20 U.S.C. § 1232b
7. Education of the Deaf Act, §§ 105(b)(4), 202(b)(5); 20 U.S.C. §§ 4305(b)(4), 4332(b)(5)
8. Federal-Aid Highway Act, § 12(a); 23 U.S.C. § 113(a)
9. Indian Health Care Improvement Act, § 303(b); 25 U.S.C. § 1633(b)
10. Native American Housing Assistance and Self-Determination Act, § 104(b); 25 U.S.C. § 4114
11. Hawaiian Homelands Homeownership Act, § 203; 25 U.S.C. § 4225(b)
12. Indian Self-Determination and Education Assistance Act, §§ 7, 509(g); 25 U.S.C. §§ 5307, 5389(g)
13. Federal Water Pollution Control Act, § 513; 33 U.S.C. § 1372
14. Save Our Seas 2.0 Act, § 302(e), 33 U.S.C. § 4282(e)
15. Veterans Nursing Home Care Act, § 4(a); 38 U.S.C. § 8135(a)(8)
16. Postal Reorganization Act, § 410(b)(4)(C); 39 U.S.C. § 410(b)(4)(C)
17. Appalachian Regional Development Act of 1965, § 402; 40 U.S.C. § 14701
18. Hospital Survey and Construction Act, § 605(a)(5); 42 U.S.C. § 291e(a)(5)
19. Safe Drinking Water Act, § 2(a); 42 U.S.C. § 300j-9(e)
20. Public Health Service Act, §§ 1621(b)(1)(I), 1642(b)(1)(D); 42 U.S.C. §§ 300s-1(b)(1)(I), 300t-12(b)(1)(D)
21. U.S. Housing Act of 1937, § 12; 42 U.S.C. § 1437j
22. Housing and Community Development Act of 1974, §§ 110, 802(g); 42 U.S.C. §§ 1440(g), 5310
23. Housing Act of 1964 (farm housing), § 516(f); 42 U.S.C. § 1486(f)
24. Defense Housing and Community Facilities and Services Act of 1951, § 310; 42 U.S.C. § 1592i
25. Headstart, Economic Opportunity, and Community Partnership Act of 1974, § 11; 42 U.S.C. § 2992a
26. Atomic Energy Act, § 1804; 42 U.S.C. § 2297g-3
27. Housing and Urban Development Act of 1965, § 707; 42 U.S.C. § 3107
28. Public Works and Economic Development Act, § 602; 42 U.S.C. § 3212
29. Domestic Volunteer Service Act of 1973, § 406; 42 U.S.C. § 5046
30. Robert T. Stafford Disaster Relief and Emergency Assistance Act, § 611(j)(9); 42 U.S.C. § 5196(j)(9)
31. Energy Policy and Conservation Act, § 399A(g)(4); 42 U.S.C. 6371h-1(g)(4)
32. National Energy Conservation Policy Act, § 312; 42 U.S.C. § 6371j
33. Public Works Employment Act of 1976, §§ 109, 208; 42 U.S.C. §§ 6708, 6728
34. Energy Conservation and Production Act, § 45(h); 42 U.S.C. § 6881(h)
35. Solid Waste Disposal Act, § 2; 42 U.S.C. § 6979
36. Clean Air Act, § 314; 42 U.S.C. § 7614
37. Cranston-Gonzalez National Affordable Housing Act, § 811(j)(5); 42 U.S.C. § 8013(j)(5)
38. Comprehensive Environmental Response, Compensation, and Liability Act, § 104(g); 42 U.S.C. § 9604(g)
39. Head Start Act, § 644(g)(3); 42 U.S.C. § 9839(g)(3)
40. HOME Investment Partnerships Act, § 286(a); 42 U.S.C. § 12836(a)
41. Energy Policy Act, §§ 963(c)(4)(B), 1702(k); 42 U.S.C. §§ 16293(c)(4)(B), 16512(k)
42. Energy Independence and Security Act, §§ 136(d)(2)(A), 491(d), 545(a)(1), 803(b)(3), 1112(a); 42 U.S.C. §§ 17013(d)(2)(A), 17121(d), 17155(a)(1), 17282(b)(3); 49 U.S.C. § 22301(e)
43. Boulder Canyon Project Adjustment Act, § 15; 43 U.S.C. § 618n
44. Urban Mass Transportation Act, § 10(a); 49 U.S.C. § 5333(a)
45. Rail Passenger Service Act, § 405; 49 U.S.C. § 24312
46. Airport and Airway Improvement Act, § 515(b); 49 U.S.C. § 47112(b)
47. Delaware River Basin Compact, Pub. L. No. 87-328, § 15.1 (not codified)

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