

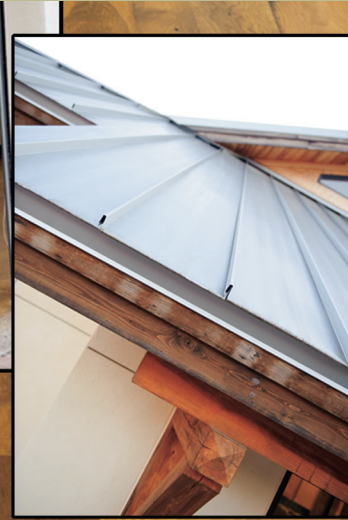
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Sustainable Building Practices

The Raw Materials for Success

Inside:

Avoid Mistakes on Government Jobs

Common Mistakes on Government Jobs

The top seven blunders and how to avoid them.

by Adam Bonsky

American Recovery and Reinvestment Act (ARRA) dollars are flowing and creating welcome business opportunities for contractors. For those who are new to public works projects—and even for some contractors who have performed government work before—trying to make sense of regulations that apply to government funded projects can be confusing. When it comes to keeping track of compensation and benefits for workers employed on these jobs, it is easy to overlook important laws or not fully comprehend their meaning. Many rules regarding what and how you pay your employees on these jobs are complex and easy to misinterpret.

To compound the situation, scrutiny by regulatory agencies to ensure compliance with these laws is tough—and getting tougher. When it comes to violations, auditors will not distinguish between errors that are made due to lack of experience with the law and those that are intentional or “willful.” Violations can carry hefty fines and even lead to permanent debarment from work on any future federally funded contracts.

Fortunately, some of the most common mistakes made by government contractors are fairly easy to correct. Here are some of the most commonly seen mistakes made by government contractors when it comes to compensation and benefits, along with tips on how to avoid making them.



1. Not taking credit against the fringe portion of the prevailing wage for benefits provided for hourly employees working on covered projects.

The Davis-Bacon Act requires all contractors and subcontractors performing work on federally-funded construction contracts to pay their laborers and mechanics no less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. In many cases, employers working Davis-Bacon Act contracts are paying some or all of the health insurance premium for their hourly employees, yet they fail to take credit against the fringe portion of the prevailing wage for providing this benefit.

2. Not taking full advantage of the fringe portion of the prevailing wage.

When the Davis-Bacon Act was written and passed, the intent was that the fringe portion of the prevailing wage would be used to provide “bona fide” benefits plans for hourly workers. Many contractors choose to pay the fringe amount as additional cash wages, believing it to be the easiest way to comply with the law. However, the magnitude of savings that could be realized by taking these dollars off the payroll can mean a huge reduction in job costs, which, consequently, means lower bids and better chances of winning government contracts.

Here is an example of how much government contractors can save by providing bona fide benefits plans for their workers.

Sample Calculation

Assume a company has 15 employees doing prevailing wage work. These employees work approximately 1,000 hours each per year. The fringe amount above the base rate is \$10/hour, and the average approximate additional payroll cost when paying fringe dollars as cash wages is 25 percent.

15 employees x 1,000 hours = 15,000 total hours

15,000 hours x \$10.00 = \$150,000 in additional payroll expense

\$150,000 x 25% = \$37,500 in savings

Examples of benefits that qualify as “bona fide” for purposes of the Davis-Bacon Act are health insurance, retirement plans, and dental, vision, life and disability insurance. When employers commit the entire fringe to providing these benefits, savings are maximized and job costs are reduced by a significant amount.

4. Misclassification of employees.

Another common mistake is classifying employees incorrectly. For example, classifying a worker as a laborer when in fact he or she is a carpenter results in the worker not being paid the correct amount for the work performed. A related issue is the submission of incorrect certified payroll. If an employee performs three different jobs while working on a prevailing wage project, the payroll must be broken out to reflect all three jobs separately.

6. Having an incorrect ratio of apprentices and journeymen.

Hiring apprentices to learn a trade is economically appealing to contractors because the apprentice rates are only a percentage of the journeyman’s base wage. A common mistake, however, is being unaware that the number of apprentices allowed is an acceptable ratio to journeymen. Make sure that you have the appropriate number of journeymen on a job when you are using apprentices.

3. Taking credit against the fringe for items that do not qualify under the law.

The Davis-Bacon Act specifies what qualifies as a “bona fide” benefit, yet some contractors may mistakenly try to take credit for benefits they provide that are not recognized under the Act. Examples of items contractors incorrectly attempt to claim as bona fide benefits include payment of workers’ compensation premiums where required by law, travel expenses, cell phones and a truck allowance.

A list of benefits which are considered bona fide under the Davis-Bacon Act can be found in the U.S. Department of Labor’s (DOL) Prevailing Wage Resource Book, available at www.dol.gov.

5. Failure to make contributions for bona fide benefit plans.

The Davis-Bacon Act requires that contributions to bona fide benefit plans be made no less than quarterly. Annual contributions into a plan do not meet this requirement. While profit-sharing plans are considered bona fide for purposes of the Davis-Bacon Act, profits are not determined until the end of the year.

7. Not realizing the prime contractor is responsible for ensuring subcontractors are fulfilling prevailing wage obligations.

When it comes to the relationship between prime and subcontractors, the prime contractors are usually aware of their responsibility with regard to performance, safety and many other operational tasks. Many may be unaware, however, that they are also responsible for their subcontractors’ accurate payroll reporting, compliance with wage determinations and fringe benefit obligations and proper documentation. The prime contractor bears the brunt of any damage awards or civil actions against subcontractors resulting from the discharge of prevailing wage obligations under Davis-Bacon provisions.

Best Practices

Seek Solutions

Even with the guidance provided on the DOL's website or Resource Book, questions may arise regarding whether contractors are, in fact, compliant with the Davis-Bacon and related Acts. The DOL offers assistance in providing answers to these questions, but many contractors may hesitate to take advantage of this, fearing it will raise red flags and increase the likelihood of them being audited.

So where can contractors turn for help? Partnering with a benefits provider who has experience with prevailing wage law can take a huge burden off a contractor's mind and workload. Not all benefits providers understand the laws, so it is important to do your research and partner with a company that understands this complex market. Some prevailing wage benefits providers may provide additional compliance assistance to their clients, either free of charge or for an additional fee. When choosing a prevailing wage benefits partner, ask how they will help if you receive a letter of inquiry or are audited for compliance with DOL and IRS regulations. Determine the extent of the assistance they provide and at what cost. Some providers will assist with preparation of responses for their clients and even speak to the auditor on a client's behalf.

With the government's increased scrutiny on how the dollars allocated for the ARRA are being spent, it has never been more important for contractors working on government jobs to be aware of and compliant with the relevant legislation. ■



Adam Bonsky is executive vice president of government markets for Fringe Benefit Group, which has been helping the construction industry and related associations design and administer fringe benefit programs since 1983. For more information on prevailing

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wage benefit plans and bidding on government jobs, visit www.thecontractorsplan.com or www.fringebenefitgroup.com.

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