What EPA Brownfields Grantees Should Know:

Davis Bacon Act / Build America, Buy America

August 27th, 2024 11:00am Virtual



Alicia Flammia B



Register Here!



https://bit.ly/DBAandBABA





Thank you for joining us today!

This webinar will be starting soon.

This webinar is for informational purposes only.

But first, some helpful information:



Today's session will be recorded.



The recording for this session will be available on our website: https://www.njit.edu/tab/





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We want to know your thoughts! Fill out our feedback survey after today's session.

Continue the conversation on our LinkedIn page! https://bit.ly/4f0Ve3H





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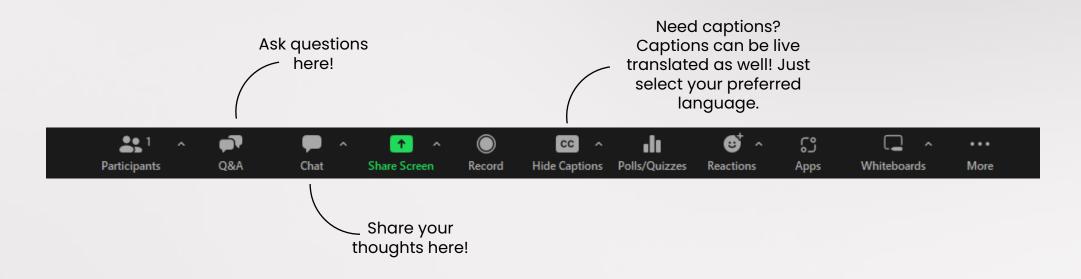


Experiencing technical issues? Know someone who is having trouble hopping on?

Reach out to me via email at fm392@njit.edu

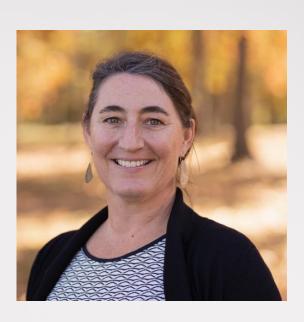


Need some assistance?





Today's Speaker:



Alicia Flammia
Brownfield Redevelopment
Solutions, Inc.

Email: aflammia@brsinc.com



EPA Brownfields Grantees: DBA/BABA Webinar

Responsibilities of Grantees and Contractors



Agenda

Davis Bacon Act (DBA)

- Background
- Responsibilities of the Grantee
- Responsibilities of the Contractor

Build America Buy America (BABA)

- Background
- Responsibilities of the Grantee
- Responsibilities of the Contractor

Q&A / Discussion



Davis Bacon Act (DBA): Background

- Enacted in 1931 establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics.
- Davis-Bacon and Related Acts and Reorganization Plan No. 14 of 1950 The U.S. Department of Labor (DOL) is responsible for determining <u>prevailing wages</u>.
- Davis-Bacon and Related Acts apply to contractors and subcontractors performing on <u>federally</u> <u>funded</u> or assisted contracts **in excess of \$2,000** for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.
- For prime contracts **in excess of \$100,000**, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, pay laborers and mechanics, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.



DBA applies to EPA-funded brownfields cleanup activities and projects funded under EPA Cleanup and Revolving Loan Fund Grants

Cleanup

Multi-Purpose

RLF

If any portion of the contract triggers DBA, then the entire contract must comply.

Assessment

Assessment Activities are generally considered professional services and are typically exempt from DBA.

If a recipient is uncertain about whether an activity falls under DBA requirements, they should discuss the situation with EPA before authorizing work on the site.



DBA: Exempt Activities



Professional Services



Purchase of Equipment/
Supplies



Construction,
Repairs or
Alterations
Under \$2,000



Cleanup of Petroleum-Contaminated Brownfields

Some cleanup activities at sites contaminated by petroleum are NOT subject to DBA requirements including:



- Remediation by drilling temporary recovery wells
- Withdrawal of contaminated soil or water
- Treating the contaminated soil/water on site
- Removing the remedial technology and closing recovery wells
- Underground Storage Tank Removal...unless *If asphalt, concrete* or similar is being constructed for site restoration as part of the UST remediation activities, then DBA is applicable.



Responsibilities of the Grantee: Procurement

- ☐ Include wage rates and labor standard requirements in bid package
- ☐ Rates are locked-in at bid opening provided contract is awarded within 90 days
- ☐ Wage rates apply to prime and all subcontractors



Wage Rates

- Solicitations and contracts must contain <u>both</u> DBA and State Prevailing Wage rates.
- Employers must pay the <u>higher</u> of the two rates.
- State Prevailing Wage Rates may be obtained online in some States. If the State does not make them available online, the contracting entity (typically the EPA Recipient) shall request the wage rates directly from State's Department of Labor.
- Davis Bacon Wage Determinations can be obtained from SAM.gov



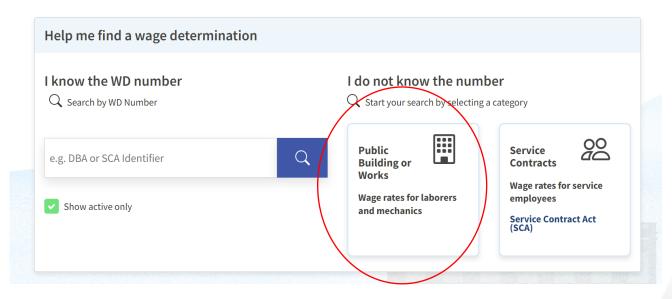
How to Obtain Davis Bacon Wage Rates

Davis Bacon Wage Determinations can be obtained from SAM.gov

If you do not know the Wage Determination Number, then select "Public Building or Works".

On the next screen, populate the State, County and Construction Type.

https://sam.gov/content/wage-determinations

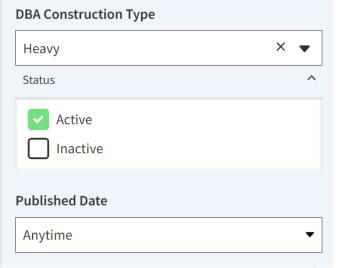


Construction Types include Building, Heavy, Highway and Residential. Most Brownfields cleanups will be classified "Heavy" except for asbestos or lead paint removal which would most likely be classified "Building".



How to Obtain Davis Bacon Wage Rates

After you select the Construction Type you will be given the options for "Status" and "Published Date". Select the appropriate options for the query you are trying to run.



Next: Download the document and include it with the solicitation.

Some Counties may produce multiple results for "Heavy". Open each link to determine which is appropriate for the proposed work.

Construction Type: Heavy is typical for brownfields work rather than Construction Type: Heavy Dredging



Now let's discuss other responsibilities of the Grantee:

Construction Management





Contract Administration



Responsibilities of the Grantee: Construction Management

- ☐ Perform Interviews
- ☐ Verify Jobsite Postings
- ☐ Verify Locked-in Wage Rates or Project Wage
- Sheet are Accessible on Site



Conducting Interviews

Interviews should be conducted at a minimum of two times for each contract:

☐ Within 2 weeks of initial start of work

☐ Within 2 weeks of the final certified payroll

Interviews should be conducted for both prime and subcontractors.

Grant recipients may request exceptions to the frequency of payroll spot checks and interviews.



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Jobsite Postings/Wage Rates – What to look for?

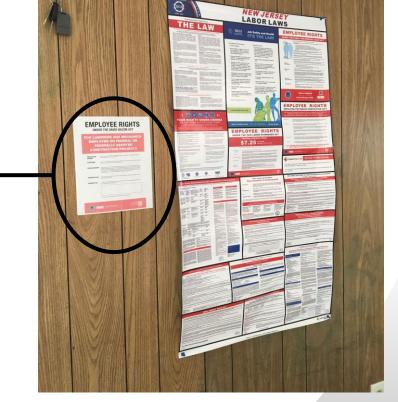
In addition to other workplace posters, Contractors must post the WH-1321 "Worker Rights Under the Davis-Bacon Act" poster at the site of the work along with the applicable wage determination.

Posters must be accessible, easy to see and protected from the elements. Posters may be provided in multiple languages if applicable.

WORKER RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS **WORKING ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS**









Project Wage Sheet

As an alternative to having the complete wage package on the site, the Contractor may maintain a Project Wage Sheet with the specific wages pertaining to the work being conducted under the contract.



Project Wage Rate Sheet

Project Name and Address				revailing Wage	
				ion (PWD) Nun	
				dification Numb	er
			1. Federal :		
			2. NJ State -Co		
Project Number			3. NJ Statewide		
Bid Opening (if applicable)			Project County:		
Contract Award Date			Construction St	art Date	
Work Classification (Trade)	PWD 1. List which PWD 1, 2, or 3 above and 2. What page did you find the applicable wage rate?	Group or Union No. (if applicable)	Basic Hourly Rate (BHR)	Fringe Benefits	Total Hourly Prevailing Wage Rate
Example: Operating Engineers (Backhoe)	3, page 4	NA or Local 825	45.23	23.65	\$ 68.88
Laborers Class A	2, page 65	NA	32.54	21.48	\$ 54.02
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Instructions

Use the official Prevailing Wage Determinations (PWDs) issued at time of construction contract award to complete
this sheet. Wage Determinations must be posted in prominent and easily accessible place at the work site (e.g. payroll
office). This sheet can be posted in place of the PWDs as long as the PWDs are available for review.

 ^{**} Any combination of the Basic Hourly Rage + Fringe Benefit must equal or exceed the Total Hourly Prevailing
Wage Rate. Wages (regardless if use of union workers) must meet at least the verified prevailing wage rates listed on this
sheet

Responsibilities of the Grantee: Contract Administration

- ☐ Include link to the <u>Contract Provisions for Davis-Bacon and Related Acts</u> (DBRA) in all applicable contracts*
- ☐ EPA recipients and subrecipients must include the link to DBRA Requirements for EPA Subrecipients in all applicable EPA subawards
- ☐ Review Certified Payroll of Prime and Subcontractors
- ☐ Complete "Payroll Checker" Portion of Interview Form
- ☐ Records Retention Required for 3 Years
- ☐ Respond to Audits by EPA or DOL



*This pertains to EPA grant recipients, subrecipients, prime contractors and subcontractors.

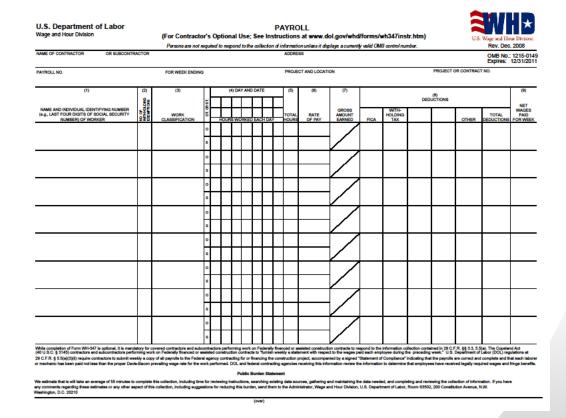
Certified Payroll

Certified Payroll should be submitted by the Contractor along with each request for payment for both prime and subcontrators who performed work during that period.

If there are errors on the certified payroll they should be addressed before payment is made to the Contractor.

Certified Payroll must include a compliance statement with original signature of corporate official or designee.

Grantees may stipulate in the bid documents if they prefer Form WH 347 be used for Certified Payroll.





Payroll Checker: Interview Form

For each on-site interview that is conducted the associated Certified Payroll should be reviewed in order to complete the Payroll Checker portion of the interview form.

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Responsibilities of the Contractor

- ☐ Request Additional Wage Classification (if needed)
- ☐ Provide and Maintain Jobsite Postings
- ☐ Provide Access for On-Site Interviews of Employees
- ☐ Provide Complete Payment Requests Including Certified
- Payroll for Prime and Subcontractors



Build America Buy America (BABA)



BABA: Background

- November 15, 2021, Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58 signed, which includes BABA
- Applies to Federal Cooperative Agreements awarded or amended AFTER May 14, 2022
- Responsibility falls on all levels: Grantee, Contractor, Suppliers, and Manufacturers
- Applies to activity related to the construction, alteration, maintenance, or repair of projects that are <u>publicly owned or serve a public function</u>, NOT private projects

NOT applicable to RLF loans to private entities.



BABA: Applicable Materials

Requires all of the <u>iron and steel, manufactured products, and</u> <u>construction materials</u> used in the project to be produced in the United States.

Applicable	Not Applicable
 Articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. 	 Tools, equipment, and supplies, such as temporary scaffolding brought to the site and removed at or before the completion of the project.
	 Equipment and furnishings, such as movable chairs or desks, that are used at or within the finished project.



Cleanup, Multi-Purpose and RLF Grants are most likely to trigger BABA

Cleanup

Multi-Purpose

RLF

BABA applies to both the Federal funds (EPA funded portion) and the non-Federal funds used for the infrastructure project.

Assessment

Assessment Activities generally do not trigger BABA.

If a Grantee is unsure, work with the regional project officer, who will work with the Office of Brownfields and Land Revitalization (OBLR) and the Office of Land and Emergency Management OLEM on all grants where BABA might apply.



Let's walk through this together...

Does the project involve construction, alteration, and/or repair of a building or real property?

YES = Keep Going...

NO = BABA is not appliable.

Does the project involve <u>leaving</u> iron, steel, manufactured goods or construction materials permanently affixed to the property?

YES = Keep Going...

NO = BABA is not appliable.

Is the project publicly owned or serve a public function?

YES = then BABA APPLIES!!!

NO = BABA is not appliable.



BABA: Waivers

Waivers fall into two categories, General Applicability or Project/Product Specific.

General Applicability Waivers

- Apply to multiple projects/products within a program
- Are subject to OMB consultation and 15 days of public comment

Project/Product Specific Waivers

- Apply to a specific project/product
- Are subject to informal OMB consultation and 15 days of public comment



BABA: Types of Waivers

- Public Interest Waiver: When applying the domestic content procurement preference would be inconsistent with the public interest. Adjustment Period and De Minimus Waivers fall under this type.
- **Nonavailability Waiver**: Types of iron, steel, manufactured products, or construction materials are not produced in the US in sufficient/reasonably available quantities or of a satisfactory quality. Market research will be needed on the availability of sources.
- Unreasonable Cost Waiver: Inclusion of products produced in the US will increase project cost by more than 25%. Requires documentation and cost comparison.



BABA: Types of Waivers Granted

- Adjustment Period Waiver: Coop Agreements awarded between 5/14/22 and 2/28/2023.
- Small Project Waiver: Where assistance agreements or subawards under assistance agreements are less than \$250K. Expires 9/26/2027.
- **De Minimus Waiver**: Products that qualify for a de minimis waiver cumulatively may comprise no more than a total of 5% of the total project cost. Expires 10/21/2027.
- Minor Components Waiver: Allows manufacturers with small iron or steel components in their product that are non-domestic to comply with BABA. Expires 4/11/2028.
- Pacific Island Territories General Applicability Waiver: BABA requirements for Pacific Island Territories. Expires January 2025. EPA will review for extension July 2024.
- All of EPA's approved waivers: https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers



Responsibilities of the Grantee: Procurement

- ☐ Include BABA requirements in bid documents and contracts, including requirements for contractor documentation
- ☐ Be aware of materials required for project and request waivers in advance if applicable
- ☐ Submit request for waivers to EPA EPA will not work with consultants, suppliers, or subrecipients on waivers



Responsibilities of the Grantee: Construction Management



- ☐ Review material documentation/certifications provided by Contractor prior to material delivery to site
- ☐ Verify materials delivered to site match documentation
- ☐ Retain documentation potential future audits



Responsibilities of the Grantee: Contract Administration



- ☐ Verify material documentation matches invoices
- ☐ Verify manufacture certifications or waivers are on file prior to processing payment to vendors
- ☐ Maintain documentation!



Responsibilities of the Contractor

- ☐ Obtain documentation/certification from manufacturer and provide to Grantee prior to material delivery to site.
- ☐ Ensure Manufacturer Certification Includes:
 - ☐ Project Name
 - ☐ List of Products
 - ☐ Location of Manufacturing
 - ☐ Signature of Representative
 - ☐ Reference to BABA Compliance





References:

DBA Fact Sheet:

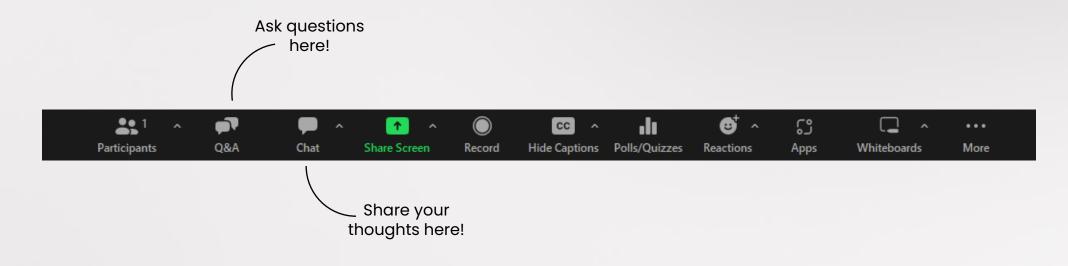
https://www.epa.gov/system/files/doc uments/2024-04/davis-bacon-factsheet.pdf

EPA - BABA:

https://www.epa.gov/cwsrf/build-america-buy-america-baba

Thank you for attending today's webinar!

Questions and Comments?







NJIT TAB EPA REGION 2

NJIT has served as an EPA designated technical assistance provider since 2008



Assistance is free!





NJIT TAB EPA REGION 4

NJIT has served as an EPA designated technical assistance provider since 2008

NJIT TAB serves as an independent resources to state, territory, regional, county, tribal, and local government entities, and nonprofits attempting to learn about, identify, assess, cleanup and redevelop brownfields.

Assistance is free!



The NJIT TAB Team

We are planners, engineers, environmental scientists, hydrogeologists, geologists, and social scientists who have engaged with thousands of communities throughout the country

We provide assistance through our:

- Brownfields Academy
- Brownfield Community Engagement and Educational Forums
- One-on-one Technical Assistance



NJIT TAB Brownfield Community Engagement and Educational Forums

- Brownfield Basics Workshops: brownfield redevelopment process.
- **Grant Writing Workshops:** getting started on your MAC grant applications; tips and tricks for preparing an EPA brownfields grant application.
- Community Workshops: on brownfield-specific topics.
- Webinars: on brownfield-specific topics.
- Breaking Brownfields: an event where a government entity or nonprofit presents their specific brownfields redevelopment challenge to an audience of private sector representatives and obtains feedback on how to overcome those challenges.
- IAWG: an event where a government entity or nonprofit presents their specific brownfields redevelopment challenge to an audience of state and federal government representatives and obtains feedback on how to overcome those challenges.
- Brownfield Summits: Full day event that may include an IAWG segment, peer-to-peer sessions, success stories, and sessions on brownfieldrelated topics relevant to the specific locations, their needs, and their challenges.
- Conferences: pre-conference workshops, learning labs, panel sessions, office hours

NJIT TAB One-on-One Technical Assistance

Examples of one-on-one Technical Assistance tailored to fit specific community's needs

- Answer your brownfield questions
- Develop redevelopment strategy
- Review draft EPA grant applications
- Explain the regulatory programs
- Develop your redevelopment roadmap
- Identify funding sources
- Explain clean-up technologies

- Guidance on developing brownfield inventories
- Create site prioritization processes
- Develop strategies on marketing brownfield sites
- Develop Assets and Needs Studies
- Design and conduct community redevelopment vision workshops



And Much More!

NJIT TAB Brownfields Academy

www.njit.edu/tab

- How-To Videos
- Infographics
- Success Stories
- News and Upcoming Events
- Federal and State Funding Sources
- EPA And State Contacts
- Previously Recorded Webinars
- Downloads of Workshop and Seminar
 Presentations
- Successful Grant Applications





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Upcoming Events 2024

TAB On Tour



September 5, 2024

What EPA Brownfields Grantees
Should Know: Grant Management

Webinar



September 3 - 6, 2024

2024 Florida Planning Conference "Resilient Reuse-Green Infrastructure & Brownfields"

Tampa, FL



If you'd like NJIT TAB to host a webinar for you, feel free to contact us!



September 5, 2024

Grant Strategies for Abandoned or Underused Contaminated Properties

Tampa, FL



Upcoming Events 2024

TAB On Tour



September 18, 2024

Brownfields: From Vacant to Vibrant

Quincy, FL



September 19, 2024

2024 Alabama Brownfields
Conference

Pelham, AL

TAB On Tour

If you'd like NJIT TAB to visit your area, feel free to contact us!



September 24 - 25, 2024

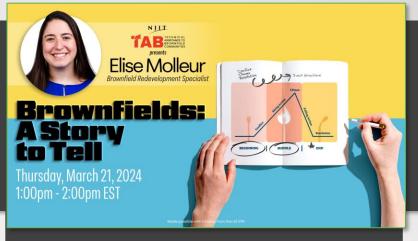
Brownfield Coalition of the Northeast: Northeast Sustainable Communities Workshop

Morristown, NJ

In Case You Missed It



What EPA Brownfields
Grantees Should Know:
Procurement



Brownfields: A Story to Tell



Brownfield Contaminants and Human Health



Both these webinars with associated presentations and resource links can be found on our website!

www.njit.edu/tab/webinars



NJIT provides free technical assistance to state, regional, county, tribal, and local government entities and nonprofit organizations interested in learning about, identifying, assessing, cleaning up, and redeveloping brownfield sites in EPA Regions 2 & 4.

Thank you for attending today's webinar!



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Have any more questions after today?



www.njit.edu/tab

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https://www.linkedin.com/company/njit-tab/



https://bit.ly/zoom-njit-tab