



Davis Bacon Act Orphaned Utilities



Davis Bacon Act Compliance



Army Expectations

- **The “Project” (MM/PM/GC) will ensure that the DBA is complied with for all Project activities to which DBA applies**
- **Absent unusual circumstances (e.g., work performed by “Project Employees”) contract workers performing PM functions will be paid DBA prevailing wages per the standard found in DFARS 222.402-70**
 - Painting in excess of 200 sq./ft. per service order
 - Repairs involving more than 32 hours of work per service order
- **Army approval of Projects’ budgets conditioned on Projects budgeting for DBA compliance**



Davis Bacon Issues



- **Old issue -- Application of DBA to Projects' property management related activities**
 - On 25 NOV 2015, DASD (FI&M) requested a determination from DOL regarding DBA applicability to property management related construction and repair
- **New Issue -- Application of DBA to any type of Project activity**
 - Decision of the Federal Court of Appeals DC Circuit in District of Columbia v. Dep't of Labor (the "City CenterDC" decision) calls into question whether or not there is the DBA requisite "contract for construction" exists in MHPI transactions
 - On 28 JUN 2016, DASD (FI&M) requested a determination regarding DBA applicability in general to MHPI related construction in light of City Center DC decision



Current Status of DBA Issues



- To date, no response from DOL to OSD's requests for determination
- Until DOL responds, there is no change in Army policy regarding DBA applicability to RCI Project activities
- **RECOMMENDATION** -- If payment of DBA prevailing wages would have a significant adverse financial impact on Project finances , *consider* deferring the award of new construction contracts until after DOL issues their determination regarding DBA applicability



Project Constructed Utility Infrastructure



- In general, the Army is responsible for making utilities available to a Project and it is expected that utility infrastructure beyond the Project MSA specified “points of demarcation” will be owned and operated either by the Army or an Army UP Contractor
- Many (all?) RCI Projects have constructed utility infrastructure to support Project housing



Project Utility Infrastructure Conveyance



- **Generally, either the MSA or GL include direction on the Project's obligation to convey infrastructure to either the Army or a UP Provider**
 - If the direction in the MSA or GL is non-existent or inconsistent with the desired COA (e.g., the GL requires conveyance to the Army vice the UP Contractor at an installation where the utility has been privatized) seek guidance on how to proceed through Program technical channels
- **Conveyance to the UP Contractor requires coordination with the KO for the UP contract – Army POC is Curt Wexell at ACSIM**
- **DASA (IH&P) will not approve future Project construction until a plan for conveyance of any associated utilities is developed**



Potential Issues Associated with a Project's Ownership of Utility Infrastructure



- **Is the Project lawfully operating an “utility” or “distribution system” under state and federal law?**
 - Safe Drinking Water Act compliance should be a matter of particular concern
- **Is the Project relying on the Army to maintain Project owned infrastructure?**
 - 10 USC 2872a **DOES NOT** provide authority for the Army to maintain Project owned utility infrastructure on a reimbursable basis
- **Can a UP Provider refuse to provide service?**
 - Doyon at Fort Wainwright and Fort Greely