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Prevailing Wage Work Is Coming

Are you ready to win new contracts?



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In November 2021, President Joe Biden signed into law the Infrastructure Investment and Jobs Act (IIJA) which designates \$550 billion for rebuilding roads and bridges, improving public transit, expanding passenger rail, upgrading ports and airports, broadband infrastructure investments, fixing water systems, modernizing the power sector and improving climate resilience. Many of these projects fall under the Davis-Bacon Act — meaning they are prevailing wage jobs.

Much of that money, however, remains unspent. For instance, the Environmental Protection Agency (EPA) is due to receive \$60 billion, but as of Feb. 28, 2023, the EPA had spent less than 2% of the funds to be expended. Known as “implementation lag,” construction projects have many phases before a shovel hits the dirt. While the preconstruction phase is critical, it is also a lengthy process in which the project owner, the design team and the general contractor work together to define, design and prepare the project for execution. Preconstruction includes site selection, feasibility studies, risk assessment, budget, schedule development and various approvals from competing regulatory bodies. Essentially, preconstruction aims to ensure everyone is on the same page with the vision for the completed project before it starts.

Today much of the preconstruction efforts are ending, final bids are being released, and a transition to the implementation phase of the projects

is beginning. That proverbial shovel is about to hit the ground — and hit the ground with force nationally. In 2023, \$185 billion is expected to be spent at the state level, creating enormous opportunity for contractors who bid on and construct government-funded projects.

Simultaneously, commercial construction is slowing dramatically. In Manhattan alone, more than 100 million square feet of unoccupied office space exists. In cities across the country, including high-growth areas like Austin, Texas, office construction is coming to a screeching halt as companies adjust to hybrid work-from-home policies and do not require a fraction of the space necessary prior to the pandemic.

Unlike the stimulus investments that were recently made, the IIJA work is long-term in nature, and the investments will continue to occur throughout this decade.

As owners evaluate these public works project opportunities, the following key items may be helpful:

- *Find opportunities to bid on infrastructure projects* — Bid websites such as mygovwatch.com, planhub.com and constructconnect.com are great ways to find projects to bid on easily. Additionally, while more difficult to navigate, sam.gov/content/opportunities has federal Davis-Bacon projects listed. Most states have their own websites where opportunities may be sourced, such as the California website caleprocure.ca.gov.

- *Prevailing wage requirements* – Prevailing wage is the minimum hourly rate contractors must pay their craft workers on public works projects. Prevailing wage rates vary by location (typically by county) and type of trade (e.g., electrical or carpentry). Contractors should ensure that they are aware of the prevailing wage rates in their area and are paying their workers accordingly. It is critical to remember the prevailing wage rates include fringe benefit amounts that are meant to be spent on bona fide benefit programs. When utilized correctly, contractors can realize significant payroll tax savings when they put the fringe toward a bona fide benefits program. Bona fide fringe benefits are benefits that an employer provides to its employees and are separate from the base hourly rate. These benefits include health insurance, dental insurance, life insurance, disability insurance, pension/retirement, apprenticeship training (if applicable), paid time off (vacation, holidays, sick leave), and supplemental unemployment benefit plans.
- *Funding for workforce development* – The IIJA includes funding for workforce development programs to train workers for jobs in the infrastructure sector. Prevailing wage contractors can use these programs to train their workers and improve their skills. In fact, under the Inflation Reduction Act, there are requirements for apprenticeships for contractors to achieve maximum tax rebates.
- *Opportunities for small businesses and other designated businesses* – The IIJA includes provisions to promote small businesses (SBE), service-disabled veteran-owned small businesses (SDVOSB), minority business enterprises (MBE), women-owned businesses (WBE) and more. Prevailing wage contractors



who meet these requirements and are properly registered and designated may be eligible for set-asides and other incentives to help them compete for contracts.

- *Environmental and labor standards* – The IIJA includes provisions to promote environmental sustainability and protect workers' rights on infrastructure projects. Prevailing wage contractors should be aware of these standards and ensure they comply with them.

The IIJA offers an opportunity for prevailing wage contractors – and many of these projects are long-term. As prevailing wage contractors prepare to bid on relevant projects, they should be aware of prevailing wage requirements, funding for workforce development, opportunities for designated businesses, and environmental and labor standards included in the IIJA. By staying informed and complying with these requirements, prevailing wage contractors can keep their employees busy for the foreseeable future.

Finally, let's touch on the final rule released by the Department of Labor (DOL) on Aug. 8, 2023, concerning

the Davis-Bacon Act. This is the most comprehensive review of the act in 40 years, and with it, the DOL has attempted to modernize its approach to wage creation and fringe benefit allocation. The notice for proposed rulemaking occurred in March 2022 and was met with thousands of comments from trade associations, organized labor, third-party administrators and government contractors.

Pending significant legal action, the new rules are set to take effect on Oct. 23, 2023. It is estimated that there are more than 50 procedural changes to the act and how it must be complied with going forward, which means it is very important for contractors to be aware of wage classifications when bidding, performing work on Davis-Bacon Act projects, and when using applicable fringe dollars for bona fide benefits. If you have questions about the changes and how it might impact your company, reach out to your prevailing wage benefit partner for clarification. ▲