



"Raising standards in the construction industry."

Indiana, Illinois, Iowa Foundation for Fair Contracting
Comments to Department of the Interior
Guidance on the Bipartisan Infrastructure Law
Abandoned Mine Land Grant Implementation

June 13, 2022

The Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC) is a 501(c)5 nonprofit construction industry advocacy organization guided by a joint board of trustees representing the International Union of Operating Engineers, Local 150 (Local 150) and its signatory contractors. Local 150 represents approximately 23,000 members performing work for more than 1,000 contractors in various locations including 25 counties in northern Illinois, 14 counties in northern Indiana, and 7 counties in eastern Iowa.

The III FFC's mission is to increase market share for responsible contractors, work opportunities for skilled craftspeople, and value for taxpayers. The III FFC is committed to promoting fair and efficient contracting practices in support of responsible contractors and keeping skilled workers employed on jobsites throughout Indiana, Illinois, and Iowa. We achieve our mission through procurement oversight, market share analysis, jobsite monitoring, legal and regulatory advocacy, and governmental and public policy education.

The III FFC routinely works with local, state, and federal enforcement agencies, such as the U.S. Department of Labor (hereinafter "Department" or "DOL") and the Illinois Department of Labor, to ensure laws protecting workers and responsible contractors are enforced. In a typical year, III FFC's intervention efforts reveal and recover \$30 million in back wages, penalties, liquidated damages, and value for responsible contractors throughout our jurisdiction. In 2021 alone, the III FFC recovered nearly \$350,000 owed in back wages for cheated workers.

The Department of the Interior ("DOI") has requested comments on draft Guidance on the Bipartisan Infrastructure Law Abandoned Mine Land ("AML") Grant Implementation. With more than 20 years' experience in the public construction arena, and with Indiana, Illinois, and Iowa receiving annual AML grants, the III FFC is uniquely positioned to identify and understand the significance of DOI's efforts to provide guidance on AML grant implementation. To that end, the III FFC respectfully submits the following comments.

The III FFC applauds the Bipartisan Infrastructure Law ("BIL") of 2021 which provides a historic \$11.3 billion in coal mine cleanup and critical updates to the AML program. However, throughout its history, the AML program has lacked in workforce protections. The Draft AML Guidance

represents an essential step toward strengthening those protections, making the AML workforce core to its implementation and prioritizing “good, union jobs.” Several provisions throughout the Draft Guidance will help attract and maintain a skilled workforce where workers are paid fairly, prioritizing safety and productivity. The Guidance will help lower costs while keeping contractors who bid on such projects competitive and able to compete on a level playing field. We would like to offer the following recommendations to the Draft Guidance to encourage further inclusion of workplace protections and standards.

Davis-Bacon and Related Acts (DBRA)

The BIL requires that all laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under the BIL be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with the Davis- Bacon Act (40 U.S.C. §§ 3141-3148). DBRA labor standards are applicable to the reclamation projects completed using BIL AML funding and Davis-Bacon clauses must be included in BIL AML work contracts. The DOL Fact Sheet #66A: Bipartisan Infrastructure Law provides additional information on the responsibilities of BIL funding recipients.

The main purpose of prevailing wage requirements, such as the DBRA, is to protect local construction standards in the competitive low-bid process. Prevailing wages establish minimum wages for skilled construction workers on federally funded and federally assisted projects based on wages, benefits, and training contributions that are paid for similar work in the local area where a project is to be completed. Without prevailing wages, long-term investments in training, health, and retirement benefits can be slashed in order to win a bid on a short-term project. Prevailing wages take labor costs out of this equation, allowing contractors to compete based on core competencies rather than undermining local standards of compensation and craftsmanship.

Incorporating DOL Fact Sheet #66A language

For these reasons, it is essential to ensure that regulations are enforced effectively and uniformly across all AML programs. To that end, in addition to the language in the current Draft Guidance, the III FFC recommends incorporating the following language from the DOL Fact Sheet #66A into the Guidance:

"Among other requirements, the funding recipients must:

- ensure that the Davis-Bacon contract clauses and applicable wage determinations are inserted into any construction contracts entered into by themselves or their sub-recipients for projects receiving any federal funding subject to Davis-Bacon labor standards (the required contract clauses are set forth at 29 CFR 5.5, and general wage determinations and guidance on their application can be found at alpha.sam.gov);
- provide guidance to sub-recipients and contractors as to Related Act coverage, wage determination applicability, and the classifications of work performed on the contract;

- conduct sufficient monitoring of sub-recipients and contractors to ensure that laborers and mechanics are being paid the applicable prevailing wages and fringe benefits;
- receive and review certified payrolls, and, where applicable, forward certified payrolls to the federal funding agency; and
- upon the written request of the Department of Labor, or on their own initiative, both the federal funding agencies and the funding recipients must withhold payments to the prime contractors in an amount sufficient to cover any unpaid prevailing wages owed to workers, or suspend any further payments until violations of the Davis-Bacon labor standards have ceased.

Failure to take these actions may result in the loss of the federal funding, in accordance with 29 CFR 5.6."

Incorporating Certified Payroll Requirements

The III FFC recommends that the DOI Office of Surface Mining Reclamation and Enforcement (OSMRE) require state and tribal AML programs to forward certified payrolls and other related documents to ensure monitoring and compliance with DBRA. A database in which occupations, wages, and fringe benefits under AML contracts will help OSMRE monitor and ensure compliance with DBRA and track trends in the AML workforce. In so doing, agencies will be able to better track and maintain a skilled workforce to help fulfil OSMRE's reporting requirement to Congress.

Davis-Bacon Training

The III FFC encourages the requirement of AML officials to attend DOL sponsored training on DBRA enforcement. Working with DOL, OSMRE could develop a training course specifically for AML agencies. OSMRE currently reviews annual AML grant applications for contractors which are debarred or suspended from federal assistance, to ensure compliance with audit procedures, and risk assessment. DBRA training can help OSMRE verify an applicant can spend federal funds under the BIL and will help lower the risk of wage theft due to poor enforcement.

Updating Reclamation Plans

Under Section III on page 3 of the Draft Guidance, the III FFC recommends the additional requirement that State and tribal plans be updated for DBRA enforcement, including plans for DBRA monitoring and ensuring officials are up to date on DBRA enforcement standards.

Active Monitoring

The III FFC recommends the implementation of an active monitoring system. A monitoring system will help OSMRE verify that workers know their rights, are not victims of wage theft, and are properly paid.

Davis-Bacon Violation Notices

The III FFC recommends that OSMRE encourage state and tribes to establish a system whereby DBRA violations are communicated with the public, such as press releases or other notices of contractor violations of DBRA under a BIL AML contract. The III FFC believes that such a notice system will disincentivize contractors to cheat and ensure compliance with the program.

Conclusion

The III FFC appreciates the opportunity to comment on the Draft AML Guidance. The proposed guidance will create a level playing field for contractors and prioritize workers. The III FFC believes that by implementing the comments stated herein, compliance with DBRA standards in the program will be strengthened, better ensuring workers are being paid living wages that reflect local labor markets and bolster enforcement tools benefiting workers covered by DBRA under the AML program.

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