

**INVESTIGATIVE PROCEDURES**

**UNDER**

**DBA/DBRA/CWHSSA**

**REORGANIZATION PLAN NO. 14 OF 1950**

**DAVIS-BACON LABOR STANDARDS/  
CONTRACT STIPULATIONS**

**SPECIFIC STEPS IN CONDUCTING DBA/DBRA/CWHSSA  
INVESTIGATIONS**

**CONCLUSION OF INVESTIGATION**

**REPORT WRITING**

**THE HEARING PROCESS**

## REORGANIZATION PLAN NO. 14 OF 1950

### Purpose

- ◇ To promote responsibility for uniform and effective DBA/DBRA enforcement among federal procuring agencies under DOL coordination.

### DOL Functions/Responsibilities

- ◇ Secretary of Labor – and, by delegation, the WHD – is responsible for:
  1. Determining prevailing wages.
  2. Issuing regulations and standards to be observed by contracting agencies.
- ◇ DOL performs an oversight function and has authority to conduct independent investigations.

### Contracting Agency Functions/Responsibilities

- ◇ Federal agencies that award contracts and provide federal assistance have **day-to-day** enforcement responsibilities. The federal agency responsibilities include activities such as:
  1. Ensuring the incorporation of Davis-Bacon contract stipulations and appropriate wage determinations in DBA/DBRA covered contracts (and appropriate guidance concerning the application of multiple wage schedules) in accordance with 29 C.F.R. § 1.6(b) and 29 C.F.R. § 5.6.
  2. Ensuring that the Davis-Bacon poster (WH 1321) and the applicable wage determination(s) and approved conformances are posted at the site of the work. 29 C.F.R. § 6.6(a)(1)(i). This poster can be downloaded from the “WHD website ( <http://www.dol.gov/esa/whd/>).
  3. Reviewing certified payrolls in a timely manner. 29 C.F.R. § 5.6(a)(3).
  4. Conducting employee interviews. 29 C.F.R. § 5.6(a)(3).
  5. Conducting investigations, as appropriate, and forwarding refusal to pay and/or debarment consideration cases to WHD for appropriate action. 29 C.F.R. § 5.6 and All Agency Memorandum No. 182.

6. Submitting enforcement reports and semi-annual enforcement reports to the DOL. 29 C.F.R. § 5.7 and All Agency Memorandum No. 189.
  - ◇ Contracting agencies cannot contract out responsibility for the enforcement of the DBA/DBRA requirements.
  - ◇ Federal contracting agencies are responsible for ensuring that grant recipients who have contracting responsibilities properly apply and enforce DBA/DBRA.

## DAVIS-BACON LABOR STANDARDS CONTRACT STIPULATIONS

(29 C.F.R. § 5.5, also reiterated at 48 C.F.R. § 52.222-6 through 52.222-15)

**Definition** 29 C.F.R. § 5.2(f).

The term “**labor standards**” means the requirements of:

- ◇ The Davis-Bacon Act
- ◇ The Contract Work Hours and Safety Standards Act
- ◇ The Copeland Act
- ◇ The prevailing wage provisions of the Davis-Bacon related Acts
- ◇ Regulations, 29 C.F.R. Parts 1, 3 and 5, which govern the administration and enforcement of the DBA, DBRA, and CWHSSA

29 C.F.R. Part 5 requires contracting agencies to include in any DBA/DBRA covered construction contract the specified labor standards requirements. Normally these requirements are found in the contract under the heading “**Davis-Bacon Act**” or “**labor standards**” or “**prevailing wage requirements**” or “**federal requirements**” and include:

1. **Minimum wages** - All laborers and mechanics employed or working upon the **site of work** must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 C.F.R. § 5.5(a)(1). The laborers and mechanics working on the site of work must be **paid weekly**.
2. **Withholding** - The federal agency or the loan or grant recipient shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay the full amount of wages required by the contract. (The processing of monies so withheld is discussed further in the “*DBA/DBRA/CWHSSA WITHHOLDING*” section of this book.)

3(a) **Maintaining basic payroll records** - The contractor must maintain basic payroll records during the course of the work and preserve them for three years. Such records shall contain:

- ◇ Name of each worker
- ◇ Address
- ◇ Social security number
- ◇ His or her correct classification
- ◇ Hourly rates of wages paid
- ◇ Daily and weekly number of hours worked
- ◇ Deductions made and actual wages paid
- ◇ Contractors employing apprentices or trainees under approved programs must have written evidence of the registration of the apprenticeship program and certification of the trainee program, copies of the individual registration forms of the apprentices and trainees, and written evidence of the applicable ratios and wage rates.

(b) **Submission of certified payroll records** - The contractor must submit **weekly** a copy of all payrolls to the contracting agency. The payrolls submitted must set out accurately and completely all of the basic payroll information listed above.

- ◇ The payroll information may be submitted in any form desired. Optional payroll form WH-347 is available on WHD website at:

<http://www.dol.gov/esa/forms/whd/index.htm>

The form available there can be used as an electronically fillable form. (The WH-347 form is also published in the Federal Acquisition Regulations at 48 C.F.R. § 53.303-WH-347).

- ◇ The prime contractor is responsible for the submission of the certified payrolls to the contracting agency (including for all subcontractors on the project).
- ◇ Each payroll submitted must be accompanied by a “Statement of Compliance” as required by the Copeland Act and 29 C.F.R.

Part 3. (A form for this purpose is available on the reverse of Optional form WH-347.)

- ◇ The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution. Thus, the contractor is put on notice in the contract itself that criminal prosecution could result if falsified payrolls are submitted to the government.
- ◇ The contractor or subcontractor must make the payroll records available for inspection, copying, or transcription by authorized representatives of the contracting agency or the DOL, and must permit such representatives to interview employees during working hours on the job.
- ◇ If the contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.
- ◇ Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.

4(a) **Apprentices** - Apprentices are permitted to work at less than the predetermined rate **only** when **all** of the following conditions are met:

- ◇ Employed pursuant to and **individually registered** in a bona fide apprenticeship program registered with the U.S. DOL, Bureau of Apprenticeship and Training (BAT), or with a state apprenticeship agency recognized by BAT. (**Note - the program itself must be registered and the apprentice must be individually registered in the program**).
- ◇ The allowable **ratio** of apprentices to journeymen **on the job site** in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.
- ◇ The Davis-Bacon labor standards apprentices state requirements for how to pay fringe benefits and allow for portability of apprenticeship programs.
- ◇ The labor standards specify that if a contractor violates any of the provisions, then the person considered to be an apprentice

must receive the full amount of the applicable prevailing wage rate for the classification of work performed.

- (b) **Trainees** - Trainees are permitted to work at less than the predetermined rate only when all of the following conditions are met.
- ◇ Employed pursuant to and **individually registered** in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT). (**Note: State agency approval of trainee programs is not recognized for DBA/DBRA purposes.**)
  - ◇ The **ratio** of trainees to journeymen **on the job site** shall not be greater than permitted under the plan approved by the Employment and Training Administration.
  - ◇ Labor standards for trainees also have requirements for how to pay fringe benefits.
  - ◇ There is no portability of a trainee program from one locality to another.
5. **Copeland requirements** - All contractors must comply with the Copeland Act requirements and the requirements in 29 C.F.R. Part 3, which prohibits kick-backs and sets forth rules concerning deductions from employees' wages.
6. **Subcontracts** - The labor standards provisions require the contractor to insert the labor standards clauses in any subcontract. This clause further stipulates that the prime contractor shall be responsible for compliance by any subcontractor with the labor standards requirements in the contract. In effect, the prime contractor is ultimately responsible for the payment of the back wages.
- Note:** A definition for subcontractor is not found in the regulations. A subcontractor is any person (other than an employee) or firm who has agreed, either verbally or in writing, to perform any of the work required under the contract.
7. **Contract termination and debarment** - Debarment means that a firm and its responsible officers, and firms in which they have an interest (or substantial interest for related Act cases) are not permitted to work on covered contracts for three years. If a contractor violates any of the labor standards requirements, the contractor may be terminated from the contract and/or debarred.

8. All **rulings and interpretations** of the DBA/ DBRA issued in 29 C.F.R. Parts 1, 3 & 5 are incorporated by reference in the contract.
9. **Disputes** under the contract relating to the Davis-Bacon labor standards requirements must be submitted to the DOL for resolution pursuant to the Secretary of Labor's authority under Reorganization Plan No. 14 of 1950, and 29 C.F.R. Parts 5, 6 and 7.
10. **Certification of eligibility** - By entering into the contract, the contractor certifies that no person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts, i.e., not debarred.
  - ◇ This labor standards clause further stipulates that no part of the contract shall be subcontracted to any person or firm debarred.
  - ◇ The penalty for making false statements about eligibility for government contract work can be criminal prosecution.

## **SPECIFIC STEPS IN CONDUCTING DBA/DBRA/CWHSSA INVESTIGATIONS**

The following guidance is intended to list the various steps that are typically undertaken by contracting agencies and WHD in conducting a DBRA/CWHSSA investigation.

### **Preliminary Steps**

- ◇ Obtain the following information:
  1. Copy of the labor standards clauses in the contract.
  2. Copy of the Davis-Bacon wage decision(s) included in the contract, and in the case of multiple schedules, any instructions concerning their application.
  3. Copies of the certified payrolls submitted by the employer under investigation.
  4. Employer identification number.

### **Initial Employer Contact**

- ◇ A responsible official of the firm must be contacted at the start of the investigation.
- ◇ When investigating a subcontractor, find out what information on labor standards and wage determinations have been provided by the prime contractor to the subcontractor. Ask the subcontractor for a copy of the subcontract, if one exists.
- ◇ When a subcontractor is being investigated, the prime contractor must be notified at the beginning of the investigation.
  - ◇◇ The prime contractor can provide information on the subcontractor's performance and may have records relating to the number of employees the subcontractor had on the project, the hours they worked, and the period of time they were on the project. The prime contractor should be asked to provide a copy of the subcontract, if it exists.
  - ◇◇ The prime contractor has responsibility for compliance on the contract and is liable for back wages not paid by the subcontractor, and may decide to withhold final payment from the subcontractor until the back wage issues are resolved.

- ◇ Inform the employer that the purpose is to make an investigation to determine compliance with the pertinent statutes and regulations and outline in general terms the scope of the investigation, including the examination of pertinent records, employee interviews and physical inspection of the project.
- ◇ Obtain the exact legal name of the firm and any trade names, the full address, full names of owners or officers and their titles; number of persons employed, name and address of any subcontractors, and such similar information as may be necessary to make and complete the investigation.

### **Examination of Certified Payrolls**

- ◇ An examination of the contractor's certified payrolls should be made for accuracy, completeness, and true representation of the facts. The examination should cover the current or most recent payrolls as well as those for selected periods which reflect the practice of the contractor or subcontractor during the life of the contract.
  1. Check for completeness and accuracy of the payrolls as to the names, addresses, job classifications, hourly wage rates, daily and weekly hours worked during the payroll period, gross weekly wages earned, deductions made from wages, and net weekly wages paid the employee. Notice if there are distinctions made among the various classifications.
  2. If the Contract Work Hours and Safety Standards Act is applicable and an employee worked in excess of forty hours in any workweek, determine whether time and a half the employee's regular rate was paid.
  3. Certified payrolls should be examined for discrepancies such as a disproportionate number of laborers, apprentices or helpers on the project.
  4. The wage rates should be compared against those listed on the wage determination. If workers perform work in more than one classification, the payroll records should accurately reflect the time spent working in each. Unlisted classifications should be identified and additional classification procedures initiated, if applicable.
  5. Check for contributions to fringe benefit plans.

### **Examination of Records**

- ◇ Examine the current or most recent payroll as well as those for selected periods which reflect the practice of the contractor or subcontractor during the life of the contract. The examination should include a review of the basic time cards, time sheets, or other work or personnel records of a representative number of employees in each classification. These records should be checked against the

certified payrolls in order to disclose any possible discrepancies, or to give reasonable assurance that none exist.

- ◇ Examine documents which indicate that the firm has made contributions (or incurred costs) to fringe benefit plans. These documents might include: portions of the pension plan; documentation from the Internal Revenue Service that indicate the plan has been approved by the IRS; and records of contributions made.

### **Check for Compliance with Apprenticeship/Trainee Requirements**

- ◇ Apprenticeship/trainee program information should be obtained and examined to verify that the program has been approved by the appropriate authority. If the contractor's evidence is not sufficient, contact the Bureau of Apprenticeship and Training and/or the state apprenticeship council for verification.
- ◇ Contracting officers must obtain copies of the individual employees' apprentice/training registration forms for the file, as well as copies of the approved apprenticeship/training program itself.
- ◇ The ratio of apprentices to journeyman on the project should not exceed the ratio provided for in the apprenticeship/training plan. The ratio is determined on a daily basis, not weekly.

### **Determine if a Conformance is Necessary**

- ◇ Determine if the wage determination contains classifications and wage rates for all the types of work performed on the contract.
  1. If the applicable wage determination does not contain a classification for the work performed, the conformance procedure in 29 C.F.R. § 5 must be followed. Contracting agencies cannot arbitrarily determine a rate.
  2. Questions as to whether or not a rate has been conformed should be coordinated with WHD.

### **Employee Interviews**

- ◇ Employee interviews are essential to the completeness of the investigation.
  - ◇◇ They should be sufficient in number to establish the degree of adequacy and accuracy of the records and the nature and extent of any violations.
  - ◇◇ They should also be representative of all classifications of employees on the project under investigation.

- ◇◇ In doubtful compliance situations interviews with former employees may be appropriate.
- ◇◇ In cases involving alleged misclassification and/or falsification of payroll records, it is important to account, through the interview process, for as many employees as possible who worked on the contract.
- ◇◇ Employees should be questioned regarding other employees they worked with and the duties performed by those employees.
- ◇ Each employee should be informed that the information given is confidential, and that his/her identity will not be disclosed to the employer without the employee's written permission. (See 29 C.F.R. § 5.6(a)(5))
- ◇ Place of interview
  - ◇◇ Employees currently employed may be interviewed during working hours on the job, in accordance with 29 C.F.R. § 5.5(a)(3)(ii), provided the interview can be properly and privately conducted on the premises.
  - ◇◇ In cases of falsification of records, fear of reprisals or intimidation, it may be more advisable to conduct the interview elsewhere, such as in the employee's home, at the agency's office, or other suitable place where it may be arranged.
  - ◇◇ Employees should not be interviewed in the presence of the employer, another employee, or any other person.
- ◇ Telephone Interviews
  - ◇◇ Ordinarily, an interview should be made by telephone only if a personal interview is impracticable. When a telephone interview is used, it is suggested that the contracting officer send the employee the statement together with a request that the employee read the statement, make and initial any changes, sign and date it and return the statement to the contracting officer. It is suggested that the contracting officer keep a copy of the statement until the original is returned.
- ◇ Mail interviews
  - ◇◇ Ordinarily, an interview should be made by mail only if a personal interview is impracticable.

- ◇ Preparation of interview statements
  - ◇◇ When a written statement is taken, it should be recorded in the manner stated by the employee; it should be read by him/her, and contain a statement that it has been read and that it is correct. The contracting officer may restate or summarize the employee's remarks, but should do so in the first person and should phrase it in the employee's manner of speaking.
  - ◇◇ The statement should be signed by the employee and the signature, except in mail interviews, should be witnessed by the responsible agency official. In government contract cases, it is preferred that all interviews be signed. Where the statement is not signed, the contracting officer should give, either in the statement or his/her report, the employee's reason for not signing. Any changes in a signed employee statement should be initialed by the employee.
  - ◇◇ Each interview statement should contain the following information:
    1. Place and date of interview.
    2. Name of employer (firm).
    3. Name and permanent address of employee being interviewed.
    4. Employment status (whether present or former employee).
    5. Period(s) of employment
    6. If an apprentice, the age, date of birth, and information concerning his status.
    7. The statement should include specific information regarding:
      - ◇◇◇ rate(s) of pay and wages received
      - ◇◇◇ hour for starting/stopping work and daily/weekly hours worked
      - ◇◇◇ manner in which time and work are recorded
      - ◇◇◇ job classification(s) and exact work performed

In cases alleging misclassification, the interview statement must specifically address the various types of duties performed. It is not sufficient for an employee to only state he/she was a carpenter. The interview must state the specific carpentry duties, and the tools and materials used. If an employee worked in more than one classification, the employee must be asked how much time he/she spent in each classification.

8. When possible, the interview statement should corroborate statements given by other employees. For example, the employee should be asked to identify other workers who performed the same work.
9. The interview should cover all the allegations of violations (particularly those in a complaint).
10. The interview should also cover any other details necessary to indicate accuracy of the employer's records, statements, or certifications.

◇◇ *All interview statements must be legible.*

### **Disclosure of Information to Employees**

- ◇ The contracting officer should never give his/her opinion as to whether back wages are due. The contracting officer should never tell any employee the amount of back wages computed.

### **Case Record**

- ◇ Transcriptions of records and computations of back wages must be made when violations are found.

### **Discharging DBA/DBRA Minimum Wage and Fringe Benefit Obligations**

- ◇ "Prevailing wage" is made up of two interchangeable components -- basic hourly wages and fringe benefits.
  1. Both may be paid in cash;
  2. Payments can be made or costs incurred for "bona fide" fringe benefits; or
  3. Any combination thereof.
- ◇ Monetary wages paid in excess of the Davis-Bacon minimum wage may be used as an offset or credit to satisfy fringe benefit obligations, and vice versa.
- ◇ Fringe benefits listed in the applicable Davis-Bacon wage determination must be paid for all hours worked -- both straight time and overtime hours.
- ◇ Excess payments for overtime may not be offset/credited towards minimum wages due.

- ◇ Excess wages paid for work in one classification may not be offset/credited towards wage deficiencies in another classification. Under DBA/DBRA, each classification stands alone.

### **Determining Compliance with CWHSSA**

See the “Compliance Principles” section of this resource book for a detailed overview of determining compliance with CWHSSA overtime pay requirements, where applicable. That discussion includes examples of how to assure that CWHSSA requirements are met.

### **CWHSSA Liquidated Damages**

- ◇ Liquidated damages are computed at \$10.00 per day per employee for CWHSSA violations.
- ◇ Although the contracting officer is required in all violation cases to compute liquidated damages, the decision on whether to assess the damages is made by the federal agency. (Liquidated damages in excess of \$500 may be waived or adjusted only with the concurrence of WHD.) As a matter of administrative policy, liquidated damages are not computed for employees whose CWHSSA back wages are less than \$20.
  - ◇◇ The contractor should be advised of the potential liquidated damages, and that they will be advised of the contracting agency’s determination concerning the assessment of liquidated damages.

- ◇ Example:

	<b>M</b>	<b>T</b>	<b>W</b>	<b>T</b>	<b>F</b>	<b>S</b>	<b>S</b>	<b><u>TOTAL</u></b>
<b>REGULAR TIME</b>	10	10	10	10	10	5	0	55

In the above example, no overtime premium was paid. The 15 weekly overtime hours were worked on two calendar days, Friday and Saturday. Thus, \$20.00 in CWHSSA liquidated damages would be computed.

### **Overtime Requirements under the Fair Labor Standards Act, as amended**

- ◇ CWHSSA requires the payment of an overtime premium only if the laborer or mechanic works in excess of 40 hours in a work week on covered contract(s). Overtime hours worked, which are not subject to CWHSSA, may be subject to FLSA overtime pay. .
- ◇ Where questions arise concerning overtime pay obligations under the FLSA, referral to the local WHD office is appropriate.

## CONCLUSION OF INVESTIGATION

### Final Conference Procedure

- ◇ Inform the contractor generally of the investigation findings, and indicate that these findings are based solely on the facts and information disclosed by the investigation.
- ◇ Detail specifically what must be done to eliminate the violations, if any, and provide any available informational material such as copies of 29 C.F.R. § 3 and/or 5.
- ◇ Be willing to consider additional evidence from the contractor which may impact on the findings. For example, unresolved conformance request, evidence of fringe benefit plan, inspection reports.
- ◇ Request for payment of back wages:
  - ◇◇ The DBA contains no injunctive action procedures. Therefore, a demand for the payment of the back wages must always be made even if the employer refuses to comply.
  - ◇◇ Contracting officers should accept partial back wage restitution for undisputed issues.
  - ◇◇ Contracting officers should attempt to collect back wages even though the case meets the debarment criteria.
  - ◇◇ If the employer is a subcontractor and refuses to make restitution, the prime contractor must then be requested to make restitution. The prime contractor is ultimately responsible for the payment of the back wages.
- ◇ Notify the subcontractor and/or prime contractor of the potential for the assessment of liquidated damages (\$10.00 per day per violation) under CWHSSA, but payment of liquidated damages is **not** requested from the contractor by the contracting officer. The firm(s) should be advised that the contracting agency will make a decision on the assessment of liquidated damages at a later date.
- ◇ If there is no agreement to pay back wages, the file must be forwarded to WHD pursuant to 29 C.F.R. § 5.7 for review, collection of back wages, and debarment consideration (see All Agency Memorandum No. 182).

### Withholding

- ◇ In refusal-to-pay cases under both DBA/DBRA and CWHSSA, the contracting agency shall withhold contract funds to cover the back wages due.
- ◇ If funds remaining on the contract under which the violations occurred are insufficient to cover the back wages due, the contracting agency can withhold funds from other contracts subject to DBA/DBRA/CWHSSA or any other federal contract held by the same prime contractor – “cross-withholding”.
- ◇ Contracting officers should immediately notify WHD if they become aware that the prime contractor may be filing bankruptcy.
- ◇ In situations where WHD has instituted withholding actions, a letter to the prime contractor will describe the nature of the alleged violations and back wages found due. The prime contractor will have 15 days to provide written views on the alleged violations. Withholding procedures and the backwage disbursement process are discussed further in the “*DBA/DBRA/CWHSSA WITHHOLDING*” section of this reference book.

### Debarment

- ◇ Debarment occurs when a contractor or subcontractor is declared ineligible (debarred) from receiving federal or federally assisted contracts for **up to 3 years** because it was “in aggravated or willful violation of the labor standards provisions” of any of the related acts, or declared ineligible **for 3 years** because violations of the DBA were a disregard of the contractor’s “obligations to employees and subcontractors.”
- ◇ At the conclusion of the investigation, the contracting officer may advise the contractor of the potential for debarment where appropriate, **but make no statement** to the contractor about any recommendation concerning debarment.
- ◇ In no event should a contractor be left with the impression that payment of back wages eliminates the possibility of debarment.

### Debarment Criteria

- ◇ Practically, debarment is considered in those cases where the contractor has:
  - ◇◇ Submitted falsified certified payroll records
  - ◇◇ Required kickbacks of wages or back wages
  - ◇◇ Committed repeat DBA/DBRA violations

**Contracting Agency**

- ◇ Investigations which appear to meet the debarment criteria – even in situations where the back wages have been paid – should be forwarded to WHD pursuant to All Agency Memorandum No. 182.

## **REPORT WRITING**

**This is one of the most important aspects of the investigation.**

- ◇ The report is reviewed at many levels, both inside and outside the contracting agency. For example:
  - ◇◇ WHD
  - ◇◇ DOL's Office of the Solicitor
  - ◇◇ The contracting agency
  - ◇◇ The Comptroller General.
- ◇ Plan the report.
- ◇ In the report, refer to exhibits included in the case file -- do not repeat interviews in the reports.
- ◇ Avoid the use of abbreviations which may not be understood by other agencies.
- ◇ Except under CWHSSA, in most jurisdictions there is no right of individual employee action in government contract statutes. The government acts on the employee's behalf to recover back wages. Refusal-to-pay cases are usually resolved administratively by a hearing before a DOL Administrative Law Judge (ALJ). The ALJ process is time consuming and there is a delay before cases can be scheduled for hearings.

## **THE HEARING PROCESS**

- ◇ Refusal-to-pay cases are resolved pursuant to 29 C.F.R. § 5.11.
  - ◇◇ If factual issues are in dispute, WHD notifies the contractors (both prime and sub) in writing of the investigation finding and offers the opportunity to request a hearing before an administrative law judge.
  - ◇◇ If only issues of law are in dispute, WHD offers the contractors the opportunity to appeal a WHD ruling before the Department's ARB.
- ◇ In both agreement-to-pay and refusal-to-pay cases where the debarment criteria are met, the contractors are offered a hearing before an ALJ pursuant to 29 C.F.R. § 5.12 on the issue of debarment.
- ◇ ALJ decisions may be appealed to the ARB.
- ◇ The ARB hears all appeals of ALJ cases. The ARB, which acts on behalf of the Secretary of Labor, consists of members who serve at the pleasure of the Secretary. The ARB also acts on petitions for review of rulings issued by the WHD Administrator on coverage, interpretations, and wage determination matters.