



Department of Energy
Washington, DC 20585

STATE ENERGY PROGRAM NOTICE 10-003

EFFECTIVE DATE: 12/30/09

**SUBJECT: GUIDANCE ON IMPLEMENTATION OF THE DAVIS-BACON ACT
PREVAILING WAGE REQUIREMENTS FOR STATE ENERGY PROGRAM GRANT
RECIPIENTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF
2009**

PURPOSE: To issue guidance to State Energy Program (SEP) participants, on compliance with Davis-Bacon Act (DBA)¹ requirements associated with the expenditure of American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. The Department of Labor (DOL), Employment Standards Administration, Wage and Hour Division (WHD) has issued guidance on applicability of DBA requirements to all agencies engaged in funding projects for construction, alteration, and/or repair funded in whole or in part by funds appropriated under the Recovery Act.² This guidance does not modify or replace the DOL guidance or any requirements or terms and conditions contained in the grant instrument.

SCOPE: The provisions of this guidance apply to recipients of SEP funds, as named in a Notification of Grant Award (Grant Award) from DOE under the SEP and their subrecipients. The provisions of this guidance do not apply to U.S. Territories. Tribal governments are only exempt from the DBA provisions when the Tribal government performs work using its employees. The DBA applies to all contractors that employ laborers and/or mechanics performing work under a Grant Award.

BACKGROUND: The Davis-Bacon Act

The DBA is applicable to contracts of the United States³ in excess of \$2,000⁴ for the construction, alteration, and/or repair (including painting and decorating)⁵ of public buildings or public works. The DBA requires all contractors and subcontractors to pay laborers and mechanics employed on a covered contract wages and fringe benefits determined by the

¹ 40 U.S.C. 3141 *et seq.*

² See DOL All Agency Memorandum No. 207, dated May 29, 2009, available at <http://www.dol.gov/whd/recovery/AAM207.pdf> (AAM No. 207).

³ This includes the District of Columbia. For applicability of the Davis-Bacon Act to government agencies, such as states, under Section 1606 of the Recovery Act, see the DOL Advisory Letter to DOE (Advisory Letter) at http://www.dol.gov/whd/recovery/AdvisoryLetter_DOE.pdf, page 2.

⁴ The \$2,000 threshold for coverage pertains to the amount of the prime contract, not to the amount of individual subcontracts. If the covered prime contract exceeds \$2,000, all work on the project is covered.

⁵ These work activities are defined at 29 CFR Part 5.2(k).

Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality. In numerous additional laws, Congress has specifically required adherence to DBA prevailing wage requirements where they might not otherwise be applicable.

On February 17, 2009, President Obama signed the Recovery Act to jumpstart the economy by saving and creating jobs, and to foster energy efficiency efforts and achieve other goals.⁶ Section 1606 of the Recovery Act specifically requires that all laborers and mechanics employed by contractors and subcontractors on any project “funded directly by or assisted in whole or in part by” Recovery Act funds be paid prevailing wages as determined by the Secretary of Labor.⁷

Accordingly, contractors and subcontractors must ensure that any laborers and mechanics⁸ employed on projects funded or assisted in whole or in part by Recovery Act funds are paid prevailing wages as determined by the Secretary of Labor for construction, alteration, and/or repair (including painting and decorating). All recipients, grantees and subgrantees, with the exception of State and local governments that use their own employees to perform this work, must pay their employees, performing construction, alteration, or repair work, the DBA prevailing wage rate. If the entity receiving Recovery Act assistance for such projects contracts out the work, it must ensure that the DBA requirements flow down to the entities that employ laborers and mechanics that do the work.⁹

Contract Clauses

On projects where DBA prevailing wage requirements must be paid, the requirements set out in the DOL regulations at 29 CFR Parts 1, 3, and 5 are applicable. In accordance with 29 CFR Part 1, Federal agencies directly contracting for projects or providing assistance under the Recovery Act to other entities for such projects must include the DBA contract clauses in their solicitations, assistance agreements, and the resulting contracts and grants, and must require that those requirements flow down to any contracts or subcontracts for the performance of the work.¹⁰ As a consequence of the required DBA contract clauses, the recipient of the Recovery Act funds is responsible for the compliance by its subgrantees, contractors, and their subcontractors.¹¹

DOE is responsible for ensuring that the applicable wage determinations are included in solicitations, assistance agreements, and the resulting contracts and grants. SEP projects using Recovery Act funds must incorporate the most current DOL Wage Determination(s) as found at <http://www.wdol.gov/Index.aspx> for the worker classifications applicable to the work being

⁶ See <http://www.recovery.gov/?q=content/our-mission>

⁷ For the text of the Davis-Bacon provision in Section 1606, see AAM No. 207 page 2, and Advisory Letter page 2.

⁸ Apprentice and trainees may be paid at less than the DBA prevailing wage rate if the requirements set forth in 29 CFR Part 5.5(a)(4) are met.

⁹ See Advisory Letter page 2.

¹⁰ See DOE Acquisition and Financial Assistance Guide for the American Recovery and Reinvestment Act of 2009, version 2.1a, Attachment 3 at: http://management.energy.gov/policy_guidance/1672.htm

¹¹ See 29 CFR Part 5.5(a)(6) (making prime contractor responsible for lower-tier contractor compliance).

performed by employees or contractors. Please also note that the rates posted at the DOL site are minimums.

Grantees/sub-grantees and contractors/subcontractors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant. A grantee or sub-grantee and contractors/subcontractors contracting out work on a covered project must provide the wage determination to the contractors or subcontractors 10 calendar days prior to issuing the solicitation.

If an ongoing construction project, awarded prior to the Recovery Act or was not initially assisted or funded in whole or part by Recovery Act funds, later receives Recovery Act funding, the DOE contracting officer will insert the appropriate wage determination(s) in relevant contracts and federal assistance agreements effective as of the date the Recovery Act funding is approved for use on the project. The wage determinations must thereafter be included in any contracts or subcontracts for the DBA-covered work. Projects that are already subject to the DBA labor standards would not require application of a new Davis-Bacon wage determination upon receipt of Recovery Act funding unless the funding is for work not contemplated under the existing contract for construction.

Payroll Records

In addition, Grantees/sub-grantees and contractors/subcontractors on these projects funded or assisted in whole or part by Recovery Act funds shall maintain payrolls and basic records relating to payroll during the course of the work and preserve them for a period of three years thereafter for all laborers and mechanics working on the project, or as designated in the grant document.¹² **They must also ensure that all laborers and mechanics on a project funded or assisted in whole or part with Recovery Act funds are paid on a weekly basis and must submit weekly certified payroll records to the contracting and administering agency.**¹³

Published Wage Rates

Wage rates can be found at www.wdol.gov. If county recipients in any State do not have published DOL wage rates, then the county must submit a request for conformance to the DOE contracting officer for forwarding to the DOL. The conformance process often takes up to six weeks to be completed so county should plan its project activities accordingly.¹⁴

¹² See 29 CFR Part 5.5(a)(3)(i) for the payroll and record-keeping requirements, including a list of the required contents of the records and additional record-keeping requirements.

¹³ See 29 CFR Part 5.5(a)(ii)(A)-(D) for additional requirements relating to the submission of weekly certified payroll records.

¹⁴ The Department of Labor has provided guidance for anyone who must submit a conformance request for a Wage Determination on its website at <http://www.dol.gov/whd/recovery/dbsurvey/conformance.htm>

Administrative Costs

Costs associated with DBA compliance can be charged as an administrative cost. SEP recipients should contact their respective DOE Project Management Center for specific guidance on how to appropriately charge these costs.

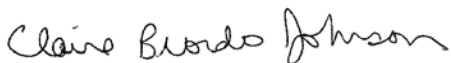
Recovery Act Funded State Energy Program Consumer Rebate Programs

Consumer rebate programs for individual homeowners are among SEP eligible project activities. DOL has determined that rebates to individual homeowners for energy efficiency and renewable energy improvements to an individual's home are not subject to the DBA prevailing wage requirements. Individual homeowners may apply for rebates either prior to or after the energy efficiency and/or renewable energy improvements are completed and will not be subject to the DBA requirements.

TRAINING

Training on DBA implementation, frequently asked questions, labor standards clauses, and other related Recovery Act information can be found at the following website:

http://apps1.eere.energy.gov/state_energy_program/



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