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TO: CHIEF EXECUTIVE OFFICERS OF DEPARTMENTS AND AGENCIES/INSTITUTIONS RECEIVING FEDERAL FUNDS

FROM: KATHERINE LYNN, DIRECTOR, ALABAMA BUILDING COMMISSION *KCL*

SUBJECT: ADDITIONAL INSTRUCTIONS FOR CONTRACTS FUNDED WITH AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDS

This memorandum provides additional information to assist state agencies in complying with the requirements of the American Recovery and Reinvestment Act (ARRA) of 2009 as they specifically pertain to public construction contracts and referenced in the State Finance Director's "Fourth Guidance on the American Recovery and Reinvestment Act of 2009", dated August 14, 2009.

As stated in the Fourth Guidance, each recipient (state agency/institution) is ultimately responsible for complying with the conditions imposed by the receipt of ARRA funds. This memorandum is not intended to relieve the recipient of those responsibilities but to aid state agencies/institutions in ensuring compliance for public construction contracts.

This memorandum does not address the reporting or accountability requirements. Any questions concerning these requirements should be addressed to the Alabama Department of Finance Federal Stimulus Information Center.

In order to ensure compliance with ARRA funding requirements, the Building Commission is requiring all state agencies/institutions to identify ARRA-funded projects for the construction, alteration, maintenance or repair of public buildings or public works. **Effective October 1, 2009, all contracts from state agencies/institutions shall include a Certification of Compliance letter (see Attachment A) completed by the state agency/institution and attached to the contract.** Contracts submitted without this letter shall be returned to the agency/institution.

Contracts for public construction funded with ARRA funds shall be required to comply with the following requirements: 1) current registration of recipients and recipient vendors in the federal Central Contracting Registration (CCR), 2) compliance with the Buy American Act and 3) compliance with the Davis-Bacon Act. These requirements pertain to both construction contracts and design contracts.

To comply with the CCR requirement, recipients and recipient vendors must obtain and maintain current registration in the CCR prior to award of and for the duration of the ARRA-funded contract. For clarification, the recipient is the state agency/institution receiving the ARRA funds. The recipient vendor is the entity that is directly contracting with the state agency/institution and includes, but is not limited to, architects, engineers and contractors. Recipient vendors that are not currently registered in the CCR can register on-line at www.ccr.gov and must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to register. To verify compliance, the Building Commission shall require the DUNS number of the recipient vendor to be listed on all ARRA-funded contracts as follows:

1. Contracts for architectural, engineering or design services shall list the DUNS number on the first page of the Agreement Between Owner and Architect (ABC Form B-2) in Paragraph 4 after the name and mailing address of the design firm.
2. For construction contracts, the DUNS number should be provided on the bid proposal form (ABC Form C-3) next to the contractor's Alabama General Contractor's License Number and verified by the architect prior to award of the contract. In addition, the contractor's DUNS number shall be included on the Construction Contract (ABC Form C-5) in Paragraph 14 along with the Alabama State General Contractor's license number.

To ensure compliance with the Buy American Act (2 CFR §176.140 and 2 CFR §176.160) and the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), the Building Commission shall require the following:

1. The architect or engineer shall clearly incorporate the requirement to comply with the Buy American Act and the Davis-Bacon Act into the project specifications and bid documents by including the attached "Supplemental Conditions for ARRA Funded Contracts" and Attachments B and C in the bid documents. Attachments B and C are mandatory federal contract clauses.
2. The architect or engineer shall include a special provision on all construction contracts (ABC Form C-5, Para. 12) that states the following:

The contract documents incorporate by reference the "Supplemental Conditions for ARRA Funded Projects" and the provisions of the Buy American Act and the Davis-Bacon Act included in Attachments B and C respectively.

3. The contractor shall be responsible for complying with the Buy American Act but this does not relieve the architect or engineer from providing due diligence in verifying that the materials proposed for the project and installed comply with the Buy American Act.
4. Exemptions to the Buy American Act shall be submitted to and evaluated by the federal agency providing the ARRA funding. The contractor requesting the exemption from the Buy American Act must coordinate and submit the exemption through the architect and the state agency/institution.

5. The architect or engineer must determine and physically include the applicable Davis-Bacon wage determination rates for the project location in the bid documents. **Failure to include the current wage determination in the bid documents is a violation of the Davis-Bacon Act.** The prevailing wage rates are determined by county and are available at www.wdol.gov. The architect or engineer must also physically attach a copy of the applicable Davis-Bacon wage determination to the construction contract (ABC Form C-5) and reference the attachment in the Special Provisions.
6. The state agency/institution shall coordinate with the federal funding agency to determine the appropriate methods for streamlining the submission of each contractor's and subcontractor's certified weekly payroll records. In the absence of an alternative agreement, each contractor and subcontractor shall submit certified weekly payrolls to the state agency/institution in accordance with 29 CFR 5.5(a)(3)(ii) for transmission to the federal funding agency.
7. Every contractor or subcontractor performing work covered by the Davis-Bacon Act shall display the Davis-Bacon notice (WH-1321) and any applicable wage determination at the job site in a prominent and accessible place where it may be easily seen by employees. The notice must be printed to 11" x 17" size and can be downloaded from <http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf> . The architect or engineer shall review this requirement in the pre-construction conference.

I understand that additional time and effort will be required by both state agencies/institutions and vendors to implement these measures and I appreciate your cooperation in ensuring the state's compliance with the requirements for ARRA-funded contracts. If you have any questions regarding this memo, please feel free to contact me at (334) 242-4082 or katherine.lynn@bc.alabama.gov.

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