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

**FROM: KATHERINE LYNN, DIRECTOR, ALABAMA BUILDING COMMISSION** *Katherine Lynn*

**SUBJECT: ADDITIONAL GUIDANCE ON DAVIS-BACON ACT (DBA) FOR PROJECTS FUNDED WITH SPECIFIC TAX-FAVORED BONDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDS**

The purpose of this memo is to provide additional information based on the recent Department of Labor in All Agency Memorandum (AAM) No. 208 which includes more specific guidance on the applicability of the Davis-Bacon labor standards to projects funded with proceeds from specific tax-favored bonds. The full text of AAM No. 208 is available at <http://www.dol.gov/whd/recovery/AAM208.pdf>.

The Building Commission has previously issued instructions for construction contracts funded with ARRA funds in a memorandum dated August 31, 2009. This memorandum issued today is intended to highlight those portions of AAM No. 208 which are of particular importance to ensure Davis-Bacon Act (DBA) compliance. However, each recipient is ultimately responsible for complying with the conditions imposed by the receipt of ARRA funds and this memorandum does not relieve the recipient of those responsibilities. Where a conflict may exist, the Department of Labor's AAM No. 208 shall govern.

*Applicability of DBA Requirements*

The DBA is applicable to all contracts funded in whole or in part with proceeds from any of the tax-favored bonds listed below:

- (1) any new clean renewable energy bond
- (2) any qualified energy conservation bond
- (3) any qualified zone academy bond
- (4) any qualified school construction bond and
- (5) any recovery zone economic development bond.

Where proceeds from tax-favored bonds are utilized, the DBA contract clauses and the applicable wage determination must be included in both the bid solicitations and construction contracts in excess of \$2000 for construction, alteration or repair (including painting and decorating). **This requirement applies regardless of the amount or form of ARRA funding.** The Department of Labor defines a project as "all construction necessary to complete the building or work regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place." While a project may include separate phases, they may be defined by the Department of Labor as a project if those phases are related in purpose, time and place. The DBA contract clauses have been fully incorporated and were previously issued by the Building Commission as Attachment C, which is available at <http://www.bc.alabama.gov/arra.htm>.

### *Wage Rate Determination*

Contracts Awarded After Notification of ARRA Assistance. In general, the applicable wage determination will be the Davis-Bacon wage determination(s) published on [www.wdol.gov](http://www.wdol.gov) as of the date of contract award (or within 10 days of bid solicitation, in the case of sealed bid competitive bidding).

Contracts Awarded Prior to Notification of ARRA Assistance. If a project is awarded or under construction prior to receiving the notice of ARRA assistance, a wage rate determination effective at the time of notification **must be requested by the agency and may be issued in appropriate circumstances under 29 CFR 1.6 (g)**. Ongoing projects that already include the Davis-Bacon wage rates are not required to include a new Davis-Bacon wage rate determination **unless the ARRA funding is being used for work not contemplated in the existing construction contract.**

### *Requests for Classification by Conformance Process*

If the contractor or contracting entity finds a classification is not listed in the applicable wage determination, the contract clauses require the workers to be classified in conformance with the applicable Davis-Bacon wage determination in the contract. Additional classifications and rates may be requested through the "conformance" process by submitting Standard Form 1444 "Request for Authorization of Additional Classification and Rate" which is available at [www.wdol.gov/docs/sf1444.pdf](http://www.wdol.gov/docs/sf1444.pdf). Further information regarding the submittal of the form is included in AAM No. 208.

### *Contractor's Obligations*

AAM No. 208 clearly states the contractor's obligations in complying with DBA. Both contractors and subcontractors must comply with the applicable DBA wage rate determination in paying all laborers and mechanics directly employed on site no less than the locally prevailing wage (including fringe benefits), must pay covered employees weekly and **must submit certified payroll records to the entity receiving the allocation or the contracting entity.** Prime contractors should also note that they are responsible for the DBA compliance of their subcontractors.

*Website for Additional Assistance*

The Department of Labor Wage and Hour Division has established a special ARRA website at [www.dol.gov/whd/recovery](http://www.dol.gov/whd/recovery) which provides additional information and resources regarding the application of the Davis-Bacon labor standards. In addition, questions regarding the applicability of the DBA to a specific project may be submitted to the Department of Labor via e-mail at [WHDARRA@dol.gov](mailto:WHDARRA@dol.gov).

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](mailto:katherine.lynn@bc.alabama.gov).

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