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State Fiscal Stabilization Fund-Rules and Regulations-LEA Webinar FAQs

1. Does an ARRA funded project have to be LEED certified?

No, ARRA funded projects are not required to be LEED certified, or certified according to any other green building rating system. SFSF guidance does however state in section III-D-1 that “the ARRA also provides that, to the extent consistent with State law, an LEA may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.”

2. Does the proof of advertisement have to include the ARRA language?

Yes, it does. At a minimum, any solicitations of ARRA projects should state that the projects are funded by ARRA and that all applicable terms and conditions such as Section 1606 Wage Rates (Davis-Bacon and related Acts) and Section 1605 (Buy American) do apply.

3. If the Davis-Bacon prevailing wage determination is updated during the course of a construction project, do the laborers and mechanics have to be paid according to the new wage determination?

No, the wage determination that was in effect at the signing of prime contract will remain in effect throughout the duration of the project.

4. When I have conducted employee interviews on the job site, I have found that the laborers and mechanics interviewed only know what they make an hour (not their hourly wage plus fringes). Why is that?

Most laborers and mechanics only know the complete hourly rate they are paid; however, although they may not know the amount of the fringe benefits paid them, they should know if they receive health, retirement, or other benefits, etc. If the contractor lists on the certified payroll that health benefits are paid, yet the employee claims that they do not get paid any benefits, then you will be responsible to investigate further to ensure that the employee is paid appropriately.

5. If a Buy American certification has not been signed, will a letter from the contractor be sufficient?

Yes, as long as the contractor signs and dates the letter. This certification or letter is expected to be on file at the time of project completion. Note that Buy American is related only to iron, steel, and manufactured goods that are incorporated into the physical structure of a public building or public work.

6. What if an American company manufactures all or part of a manufactured good in a foreign country?

Then that manufactured good would not be in compliance with Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) which is Buy American. A manufactured good can be made of all foreign parts, but must be assembled or manufactured in America to comply with Section 1605 of ARRA.

7. What is the money threshold for having to bid projects and services out?

For Commodities: Please reference Commissioner's Memo FIN-09-071 created 04/28/09.

<http://arkedu.state.ar.us/commemos/static/fy0809/4219.html>

Ark. Code Ann. provides that open market purchases of commodities may be made where the purchase price is less than ten thousand dollars (\$10,000). However, no purchasing official shall parcel or split any item or items with the intent or purpose to enable the purchase to be made under a less restrictive procedure. In addition, Commissioner's Memo FIN-09-036 dated December 5, 2008, provides further information regarding ethical guidelines related to purchases.

For Construction Projects: Arkansas Code Annotated 22-9-203 states (Please see the entire Annotated code for the exceptions and other requirements):

No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state or any other agency thereof, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of twenty thousand dollars (\$20,000) unless:

Any county, municipality, school district, or other local taxing unit shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.

8. If districts use their own people (already hired in the district for other purposes) for construction projects, does Davis-Bacon apply?

No, employees of the district would be exempt from Davis-Bacon. Only employees of contractors and subcontractors working on ARRA funded projects over \$2,000 (for the prime contract) would have to comply with Davis-Bacon and related Acts.

9. If an LEA is combining other funding sources with its use of SFSF funds, do the terms and conditions of ARRA, such as Davis-Bacon still apply?

Davis-Bacon would apply to the entire project even if ARRA funds are only used to pay design professionals, architects and engineers. The Act requires Davis Bacon wage compliance for projects that are 'funded directly or assisted in whole or in part' with ARRA funding, in any amount. The language in ARRA broadens the usual scope of Davis Bacon.

10. Will everyone have an on-site visit from the Department of Finance and Administration's Office of Intergovernmental Services?

Most everyone will have a site visit, depending on what types of projects are being paid for with State Fiscal Stabilization Funds (SFSF). If projects are exempt from Davis-Bacon and Buy American (projects without construction, alteration, or repair including painting and decorating), then we can conduct a desk review to ensure compliance-this is determined on a case by case basis.

11. If we have an on-site visit, will it cover all projects or just selected projects?

The extent and frequency of on-site visits from DFA-IGS will be determined on a case by case basis.

12. How often must the certified payroll be reviewed? Weekly, biweekly?

Certified payrolls should, if possible, be reviewed weekly, but we understand that this may cause a hardship. There is no actual time requirement, but it is your responsibility as the contracting officer to review them in a timely manner.

13. How often must the interviews take place?

It's best to perform interviews at different times, but no set number of times. You would want to interview a sample of employees from each prime and subcontractor, so you should ask for a schedule of when those employees will be on-site and time accordingly. Try to sample an employee from each classification listed. The work performed and the tools they use will help you catch if the contractor is misclassifying workers on certified payrolls.

14. How do we handle projects that are already completed? For example, small construction projects for modernization, such as a gas line repair, etc.? Should we go back and try to collect that paperwork? Obviously, it is too late to interview people.

With projects that have already been completed, you will need to collect all items necessary to reach substantial compliance. It is often found that employees were being paid the prevailing wage on a weekly basis. You can amend the contract or agreement to state that they did pay the prevailing wage and attach the prevailing wage determination that was effective at the time the prime contract was signed. It is also your responsibility to collect certified payrolls from all prime and subcontractors who employed laborers and mechanics on ARRA funded projects which needed to comply with Davis-Bacon. Proof of compliance with Buy American will have to be collected for any iron, steel or manufactured goods that were incorporated into the physical structure of a public building or public work. It is also important to show proof that you followed all applicable state laws and codes, including the proper procurement procedures.

15. We have hired some contractors and subcontractors who do not have any employees, and they did the work themselves. Do those contractors and subcontractors have to submit certified weekly payrolls?

No. Business owners who do not employ laborers or mechanics would be exempt from compliance with Davis-Bacon.

16. Do items such as LCD projectors or Smart Boards have to be manufactured in the United States? What about playground equipment which has steel supports?

No. Only iron, steel, or manufactured goods incorporated into the physical structure of a public building or public work have to be manufactured in the United States.

17. Does installation of Smart Boards and other items such as LCD projectors, audio-visual equipment, etc. have to comply with Davis-Bacon?

It depends on the type of installation. If installation consists of "incidental construction," such as bolting to walls, floors, or ceilings, then it would *not* fall under the terms of Davis-Bacon. If you alter the physical structure of the building by wiring, adding electrical outlets, or bracing, etc. then Davis-Bacon would apply. *This answer comes from discussions with a U.S. Department of Labor (DOL) contact. Please see section 15d10 regarding supply and installation contracts in Chapter 15 of the DOL Wage and Hour Division's Field Operations Handbook; this provides a complete explanation: http://www.dol.gov/whd/FOH/FOH_Ch15.pdf