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Are You Over-Paying Your Workers on Government Jobs?

ARE YOU OVER-PAYING YOUR WORKERS ON GOVERNMENT JOBS?

by Adam Bonsky

Contractors looking to work on American Recovery and Reinvestment (ARRA) funded projects in 2010 can be certain of two things: opportunity and competition. While the ARRA was signed into law over a year ago, the vast majority of infrastructure projects funded with ARRA dollars will begin construction in 2010. A recent report issued by Onvia, a government contracting and bussiness intelligence resource, estimates that only about 27 percent of projects created by the ARRA—approximately 9,500—had actually been awarded to contractors by the end of 2009. This means there are still over 25,000 projects that are fully or partially funded by stimulus funds, which will begin in 2010.

Given the fragile economy, the unprecedented opportunities offered by ARRA have not gone unnoticed. More than 50,000 new companies registered with the Central Contractors Registry (CCR) in 2009. This increase in competition makes it crucial for companies to submit the leanest bids possible and can make contractors feel like they're caught between a rock and a hard place. The government sector represents a growing market in an otherwise bleak construction outlook, but more competition means profit margins have narrowed significantly.

The Davis-Bacon Act

All construction projects funded wholly or in part with ARRA dollars are subject to provisions of the Davis-Bacon Act (DBA), which requires all contractors and subcontractors performing work on federally-funded construction contracts to pay their laborers and mechanics no less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. Prevailing wage rates and fringe benefits are determined by the U.S. Secretary of Labor and are specified in the terms of the request for bid. Depending on the state, some ARRA jobs are subject to state level prevailing wage considerations (sometimes referred to as "mini-DBA states"), while others fall under federal law guidance. In those cases where both a federal and state prevailing wage requirement may apply, one does not preempt the other, rather, the laws must work together. Typically, either the higher wage or the stricter standard applies.

The base wage rate must be paid to the worker in wages, but the fringe portion may be used to pay fringe benefits or allocated as additional cash wages. When contractors use the fringe portion of the prevailing wage to provide "bona fide" benefit plans for their workers, these dollars are taken off the payroll and are therefore exempt from payroll taxes such as FICA, FUTA and SUTA, as well as workers' compensation and general liability insurance. Examples of benefits that might be included in a bona fide benefit plan are retirement plans and medical, dental, vision, disability and life insurance.

Reducing payroll burden is a win-win for contractors who bid on Davis-Bacon projects. Payroll costs are reduced, which translates into more competitive bids and increased chances of winning jobs. These savings can also widen profit margins, giving contractors some breathing room when it comes to their bottom line.

Provide the Same Benefits While Saving Money

Contractors often pay the fringe as additional cash wages and then pay part or all of the employees' portion of health insurance premiums. By paying the premium using fringe dollars, contractors can offer the same benefits but realize dramatic savings just by taking proper credit. This eliminates payroll burden on those dollars, in effect "paying the contractor back" for the cost of paying the employee's portion of the health insurance premium.

> "If your company has a health plan, take the credit for that premium when you're on a prevailing wage job."

Contractors of any size can save thousands of dollars by taking proper credit for the fringe benefits they currently provide. For example, a contractor with eight hourly employees averaging $8 per hour for the fringe benefit portion of the prevailing wage, which pays 50 percent of the employee's portion of the health insurance premiums and does 75 percent prevailing wage work, can typically save almost $25,000* per year. A company with 120 hourly employees at the same average fringe benefit rate can save nearly $450,000 on an annual basis.

Interested in calculating your potential savings? Take the employee's monthly premium and multiply by twelve months to come up with an annual cost. Divide the annual cost by 2,080 hours. The result is the hourly equivalent cost for the employee's health insurance premium. For example:

Employee monthly cost for health insurance	$200.00
Multiply by 12 months	X 12
Annual cost of employees' health insurance	$2,400.00
Divide by 2,080 hours (full-time work)	2,080
Hourly equivalent cost of health insurance	$1.15

That number, $1.15, is the amount per hour that can be subtracted from the total fringe amount to pay for health insurance for this employee when on a prevailing wage job. That amount can be used to reimburse your company when the employee is on a prevailing wage job. Without changing your current plan, you can make that plan more cost-effective and have the employee "pay" for a portion of their own health insurance when on a prevailing wage job.

Using fringe dollars for fringe benefits is what the law originally intended. If your company has a health plan, take the credit for that premium when you're on a prevailing wage job. With health care reform looming on the horizon, it's highly likely you will be required to offer health benefits to your workers, so using a prevailing wage benefit plan makes good business sense all around.

Use the Entire Fringe to Boost Your Savings

Health insurance is just one example of the benefits that can be included in a bona fide benefit plan. Many employers use remaining fringe dollars to start retirement plans for their employees. Since the amount owners and other key employees can put in their company's 401(k) plan is tied to how much other employees contribute, this has the additional advantages of increasing the owner's ability to save for retirement and reducing their taxable income.

Overcoming Objections

One of the biggest reasons employers hesitate to implement bona fide benefit plans is that they anticipate negative reactions from their employees when they see the reduction in their paychecks. Educating employees about the bidding process is one way to counter these objections. Particularly with the increase in competition for government-funded jobs, the difference between winning a job and coming in second is often just a few hundred dollars. When employees understand that the savings realized by having a prevailing wage benefit plan can make up this difference many times over and make it more likely they'll continue to have work, their attitudes usually change.

It can also be helpful to show employees the average wage rate for private construction jobs for their specific trade. Wage rates for government-funded jobs are usually significantly higher than those for private construction work, which makes the opportunity to continue working on these projects much more attractive even when private work isn't scarce.

Union vs. Nonunion Benefits

Employers are often concerned that their employees will work to bring in the union as a result of seeing smaller numbers in their paychecks. However, many workers don't realize that unions have stringent requirements as to who qualifies for the benefits the unions provide. Union workers must put in a certain number of hours during a specified timeframe to be eligible for benefits. Due to seasonality of work and layoffs, some workers never qualify for benefits even though funds are withheld from their paychecks to pay for these benefits. Prevailing wage benefit plans require that all employees who do prevailing wage work are immediately eligible for health insurance and immediately vested in retirement plans paid for with fringe benefit dollars.

The Time Is Now

The current economic climate actually favors employers who are considering implementing prevailing wage benefit plans. Many construction workers have either been unemployed themselves or have friends who have been without jobs for long periods of time. With unemployment rates still high in the construction industry, those who have jobs are motivated to keep them.

Assistance Available

The U.S. Department of Labor's Wage and Hour Division is responsible for enforcing compliance with the Davis-Bacon Act. To support his pledge for increased transparency and accountability for funds spent through the ARRA, President Obama appropriated funds to hire additional investigators to ensure that contractors are complying with the laws that apply to federally-funded projects. Contractors who are new to Davis-Bacon projects may find these regulations somewhat overwhelming. Even contractors who are experienced in public works projects can unintentionally run afoul of the law.

Partnering with a benefits company that understands the complexities of these regulations can make working on ARRA-funded projects less burdensome. An experienced partner can help solve the puzzle that these laws appear to create. ■

**Assumes payroll burden of 25 percent*

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