

ARRA Offers Opportunity and Anxiety for Broadband Contractors

By John Allen

There are tremendous opportunities for contractors to benefit from the broadband provisions of the American Recovery and Reinvestment Act (ARRA), commonly called the stimulus bill. But while there is plenty of excitement, there is also a fair amount of anxiety in the broadband community about how contractors can benefit from the various competitive broadband grant programs.

Specifically, the ARRA authorized \$7.2 billion for broadband programs, including \$4.5 billion designated for the National Telecommunications and Information Administration (NTIA) and \$2.5 billion for the Rural Utilities Service (RUS). Part of the purpose of this program is to provide broadband service (e.g., faster internet access) to consumers in unserved areas of the country and improved broadband service to consumers in underserved areas. Contractors bidding on these broadband projects created by the ARRA are subject to the provisions of the Davis-Bacon Act, which may be uncharted waters for many who haven't previously worked on government-funded jobs.

What Is the Davis-Bacon Act, and How Does It Apply to Me?

The Davis-Bacon Act is a federal law that applies to all projects funded by ARRA dollars. Passed in 1931, the law requires that any contract greater than \$2,000 "to which the Federal Government or District of Columbia is a party, for construction, alteration or repair, including painting and decorating of public buildings and public works...shall contain a provision stating the minimum wages to be paid to all mechanics and laborers employed directly upon the site of the work." In 2009, the Obama administration required that all projects funded by the ARRA, regardless of dollar amount, comply with the Davis-Bacon Act.

The Davis-Bacon Act requires payment of locally "prevailing wages," including the "anticipated cost of prevailing benefits." Generally this is expressed as a per-hour wage and per-hour cash equivalent value of benefits and is often based on a union scale. Prevailing wages are set by the Department of Labor (DOL) or the local contracting agency and are included in the bid specifications of covered contracts. Thirty-one states have enacted state prevailing wage legislation, which are commonly referred to as "Little Davis-Bacon" provisions. These provisions require payment of prevailing

wages and fringe benefits on state projects as well as federal projects.

Offering Benefits Can Make Bids More Competitive

When it comes to the prevailing wage provisions of the Davis-Bacon Act, contractors have choices as to how the fringe benefit portion is paid. Many contractors pay the fringe benefit portion of the prevailing wage as additional cash wages, believing it's the easiest way to comply with the law. But allocating this amount to a bona fide benefit plan or plans can work to a contractor's advantage on a number of levels. 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 FITA, FUTA, and

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Here's an example of the savings that can be realized by putting the fringe toward benefits instead of in your employees' paychecks. Although there are variances in the rates for unemployment taxes and workers compensation, conservatively these taxes represent an additional 25 cents on each dollar paid as cash wages.

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Sample Calculation

Assume XYZ Broadband Company has 15 employees doing prevailing wage work. These employees work approximately 1,000 hours each per year. The fringe amount above the base rate is \$8/hour, and the average approximate additional payroll cost when paying fringe dollars as cash wages is 25 percent.

15 employees X 1,000 hours = 15,000 total hours
15,000 hours X \$8.00 = \$120,000 in additional payroll
\$120,000 X 25 percent = \$30,000 XYZ Broadband Company savings

Visit the interactive calculator at www.thecontractorsplan.com to calculate your company's potential savings.

Ready for an Audit?

The Obama administration has hired hundreds of new investigators to make sure that ARRA funds are being accounted for properly. It is very important for contractors to prepare themselves for an audit and understand the following:

- Certified payroll responsibilities,
- Hourly fringe benefit allocation(s), and

- Correct labor classifications for workers.

Contractors intending to bid on ARRA-funded projects should take steps now to ensure compliance with the Davis-Bacon Act and other federal and state regulations that apply. Look for a prevailing wage benefits partner with experience in this highly-regulated industry—the U.S. DOL and IRS have significantly upped their workforce and, as a result, their oversight of contractors receiving ARRA dollars. Using a firm that understands compliance from the Wage & Hour Division of the DOL, the various state prevailing wage laws, and the many requirements for employee benefits can give contractors the competitive edge to win bids, especially in a crowded market with so much opportunity. ■

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