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ARE YOU READY FOR AN AUDIT?

Government Promising Increased Scrutiny on ARRA Jobs

By Adam Bonsky

News that economic stimulus package funds are beginning to flow through the states, resulting in bid opportunities and potential jobs for government contractors, is welcome in an otherwise flat construction market. It's crucial, however, that contractors who intend to bid on and perform public works projects partner with a company that understands the economic stimulus plan (American Recovery & Reinvestment Act of 2009—ARRA) and can provide assistance with compliance on both the state and federal levels. One word sure to strike fear in anyone's heart is "audit."

EXPANDED ENFORCEMENT

The ARRA requires that all funded projects include Davis-Bacon coverage, and the U.S. Department of Labor (DOL) has indicated that it is "highly likely" any company performing a government contract will be investigated. The recent release of the DOL's proposed 2010 budget supports the agency's greatly expanded enforcement goals. The Wage and Hour Division (WHD) of the DOL is directly responsible for overseeing a variety of federal wage and hour laws, including the

Davis-Bacon Act and the McNamara-O'Hara Service Contract Act (SCA). It has requested a total of \$240,960,000 and 1,571 full-time employees to accomplish its mission in fiscal year 2010. This represents an increase of nearly \$31 million for its annual budget and covers hiring an additional 200 investigators and 88 staffers to support them.

According to the DOL's 2010 budget request and discussions with Fringe Benefit Group's Washington, D.C.-based consultant, here is an overview of the DOL's plans for increased investigation of ARRA projects:

- DOL intends on hiring 200 new investigators and 88 investigator support staff over the next 2 years.
- DOL wants to triple the number of Davis-Bacon investigations.
- In the past, fewer than 20 companies per year were debarred as a result of being investigated. The DOL now intends on leveraging debarment from future government contracts to a significantly greater extent than they have in the past.
- Investigations have previously been

complaint-driven. Going forward, they will be directed. Multiple investigators will visit a jobsite and investigate all contractors—primes and subs—simultaneously.

The 2010 budget request specifically states that "the amount of federal spending on infrastructure projects will quadruple under the ARRA. As a result, the WHD can expect its enforcement of the Davis-Bacon and related Acts to increase by an equivalent measure over a number of years." While the WHD budget includes funding earmarked to allow it to respond to requests for "education assistance and to actively host related outreach events," prudent contractors should take steps now to ensure compliance with state and federal regulations, including a review of their benefits programs. *The burden of proof is on the contractor* in an audit or inquiry situation.

ENSURE PREVAILING WAGE BENEFIT PLAN COMPLIANCE

Contractors should ensure that its company's prevailing wage benefit plan is compliant. When facing an investigation,

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having the DOL-required paperwork will eliminate an additional headache. When a company is being investigated, the DOL will review whether the benefit portion of the prevailing wage is actually being contributed toward a bona fide benefit plan. While on its face this may seem simple to prove, here's a list of some of the documentation the DOL may require:

- Plan documents/adoption agreement(s)/summary plan descriptions/summary annual reports
- Schedule A's
- Form 5500s
- Fidelity bond information
- Census
- Distribution forms/Form 1099s
- Schedule of contributions received
- Nondiscrimination testing results

Assembling this information is extremely time-consuming, even for the most organized contractors. Partnering with a company which specializes in benefit plans for prevailing wage contractors can not only ease the burden of compliance, it helps prevent disruption to work should a contractor receive an inquiry or audit notice. The right business partner will generate and keep these documents on file and provide them as they assist in responding to the inquiry. Additional information about the economic stimulus package, Davis-Bacon and SCA legislation, government compliance, and prevailing wage benefit plans is available at www.fringebenefitgroup.com.

Fringe Benefit Group originated the offering of prevailing wage benefit plans 30 years ago, and focuses on this market. "As a result of our experience with this specific market, we usually know what the Department of Labor expects," says Fringe Benefit Group's Chief Compliance Officer Mike Rogers. "Since we act as both administrator and recordkeeper for our client's benefit plans, we have these documents on file. When a client provides us with a copy of an audit request, we assemble the requested documentation and send it to our client quickly."

PARTNER WITH EXPERIENCE

Look for a partner who has in-house compliance experts available to assist clients in preparing for an audit at no additional cost. "Most attorneys charge around \$300 per hour," Rogers says. "Helping our clients avoid those costs, as well as allowing them to stay focused on the job, is huge."

Rogers adds that given the longevity of Fringe Benefit Group, it has developed relationships with representatives of the Department of Labor and the Internal Revenue Service. "If we have specific questions or need clarification, we can call our contacts and usually have a resolution fairly quickly."

In addition to the federal laws, many states have their own prevailing wage laws which apply to contracts funded with public dollars. A company that specializes in prevailing wage benefit plans is more likely to be current with these regulations, which is especially important in states like California where the laws are quite complex.

For many contractors, the opportunities presented by the ARRA are exciting. However, the Administration's promise of transparency and accountability for the use of these funds is now underscored by news of increased numbers of investigators and increased funding for the DOL's Wage and Hour Division. Partnering with an experienced company which understands the laws and regulations which apply to public works can help contractors bid on these projects with confidence. ■

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