POWERING NEW GROWTH

moving tennessee to a sustainable economy

Energy Efficiency and Conservation Block Grants

Compliance Workshop

David Goodman and Molly Cripps

http://tennessee.gov/ecd/recovery/eecbg.html

Schedule

Program Overview	1:00 – 1:15
General Information: Reporting, Procurement, Invoicing, etc.	1:15 – 2:00
NHPA	2:00 – 2:30
Break	2:30 – 2:45
Davis-Bacon	2:45 – 3:15
Buy American	3:15 – 3:45
Common Problems and Questions	3:45 – 4:00

Program Overview

Origins

- The EECBG Program is funded by the U.S. Department of Energy (DOE) under the American Recovery and Reinvestment Act (ARRA)
- All ARRA reporting requirements apply to each of the subgrants

Rounds 1 and 2

- $13 million invested TN communities through 133 EECBG sub-grants
- 217 buildings retrofitted
- 3,100 traffic signals and street lights
- 118 jobs and 62,000 hours
- $8 million saved annually
- 83,000 fewer metric tons of CO2

Eligible Activities

- Development of an **Energy Efficiency and Conservation Strategy** (i.e. Community Energy Plan)
- Energy efficiency **building retrofits** on existing local government facilities (schools, courthouse, city hall, county hospital, etc.)
- Installation of **small-scale renewable energy systems** on local government buildings
- **LED lighting retrofits** on existing traffic signals and street lighting

Ineligible Activities

- "By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools." (EECBG Special Terms and Conditions)
- Roofing, siding, replacing computers, construction, decorative poles for street lights, painting, etc.
- Anything outside of your application unless it is approved by the state

NEPA

- You must stay within the NEPA approved activities
- For retrofits, that includes
  - Windows, doors, HVAC, lights, new EE appliances, insulation, pumps and motors
- Not included
  - New roof, new construction, wiring, EE computers, anything with a pool, dropped ceiling, siding
- Exceptions – If the work is incidental to/directly related to the approved retrofit, it can be paid
  - For example, if you remove a huge HVAC unit from a roof and replace it with a smaller machine, you can repair the roof

General Information

Procurement and Bidding

Competitive Procurement

- Basically, use the competitive procurement processes your community already has in place and keep good records
- "All procurement transactions must be conducted in a manner providing full and open competition"
- Most purchases will be covered by this clause
  - *Procurement by Small Purchase Procedures*: This method of procurement covers relatively simple and informal procurement methods for securing services, supplies, or other property not exceeding $100,000 in cost. With this method, price or rate quotations must be obtained from an adequate number of qualified sources. (10 C.F.R. 600.236(d))

Information from Guidance for EECBG Recipients on use of Procurement Methods, from DOE, June 23, 2010, http://www1.eere.energy.gov/wip/pdfs/eecbg_procurement_guidance.pdf

Noncompetitive Procurement

- If the Grantee or Subgrantee can demonstrate that it is infeasible to use small purchase procedures, sealed bids, or competitive proposals, *and* that:
  - the item is available only from a single source;
  - the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - the awarding agency authorizes noncompetitive proposals; or
  - after solicitation of a number of sources, competition is determined inadequate,

  then it may use noncompetitive procurements.

Subcontractor Selection

- See Sections D.17 and E.10 of the contract for more information on procurement
- Ensure contracts with the subcontractors contain Wage Determinations and Special Terms and Conditions
- Oversight: ensure NEPA, Historic Preservation, other requirements are fulfilled
- Check for debarment

Debarment

- Excluded Parties List System (www.epls.gov)
- When you select a contractor, run their DUNS number and name through this website to ensure they are not excluded from doing business with the federal government
- Then send the contractor's information to us and we will approve the selection
- Wait for an email from the EECBG Program Manager before you proceed with the project

To be included in Bids

- Davis-Bacon requirement including the most recent wage determination
- Buy American requirement and the documentation needed
- At least a reference to and way to obtain the Special Terms and Conditions including that they are responsible for following them and passing them down
- At least a reference to and way to obtain the Waste Stream Plan
- Information on efficiency requirements

Process

- Send them to David to review before you release them
- From there, follow your community's competitive procurement process
- Document your advertisements, your responses, etc.
- After selection, send David the new contractor's DUNS number

Special Terms and Conditions

- Applies to any recipient or subrecipient receiving federal funding
- Covers Waste Stream Plan, Davis Bacon, Buy American and other information you need to know
- **Is subject to change!** The updates will be on our website and we will try to let you know of any significant changes

Waste Stream Plan

- Must be submitted with Final Report 60 days after project completion
- Important to make sure your subcontractors are aware that they will need to keep up with how and where they dispose of waste

Waste Stream Plan

- You should develop a plan that lists the waste that will be created and how it will be handled
- Use the sample material on the website for guidance, NOT as a finished plan
- Include the plan with the bid documents
- Follow the plan: recycle when possible and dispose of everything else properly

Required Posters

NOTICE

THIS ENTITY IS A RECIPIENT OF AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS. IF YOU HAVE KNOWLEDGE OF ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE:

1-800-232-5454

RECOVERY.GOV

Know Your Rights Under the Recovery Act!

Did you know?

The American Recovery and Reinvestment Act of 2009 [1] provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse or Recovery Act funds.

Who is protected?

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

How are Whistleblowers Protected?

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

What types of disclosures are protected?

The disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

Take Action!

Log on to Recovery.gov for more information about your rights and details on how to report at www.recovery.gov.

[1] Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5

Required Posters

- The required posters are on the website
- They include
  - Notice of ARRA funding, Rights Under ARRA, Davis-Bacon Rights, Wage Determination
  - Title VI is also required somewhere at the local government office

Reporting

Important Performance Metrics

- Jobs created
- Hours worked
- Energy savings
- Energy cost savings
- Renewable energy capacity installed and generated
- Greenhouse gas emissions reduced
- Funds leveraged

Monthly Reports

- Due on the 5th of every month
- Particularly important due date at the end of the quarter
- Send to david.g.goodman@tn.gov
- Two types: progress reports and jobs reports

Jobs Reporting

- Since jobs are calculated based on hours worked, we need excellent information on the hours worked
- Keep up with hours by week and by person/employee
- Also need to know if the job is existing or new, full- or part-time, what the job title is and what the classification is

Jobs Reporting

- Form has to be completed by every entity receiving payments
  - All contractors, admin entity, etc.
- Will be collected monthly with the monthly reports
- Spend 10 minutes on it every week, and it is easy!

Final Report

- Plan to collect
  - square footage of buildings retrofitted
  - number of installations by category
  - Receipts/tickets for Waste Stream Report
  - total hours worked on the project
  - summary of actions completed
  - information on funds leveraged
  - Information on any rebates

Monitoring

- Monthly and quarterly reports will be reviewed by ECD
- ECD will conduct site visits and complete energy audits
- DOE and other federal organizations can complete a site visit at any time as well

Additional Requirements

- Maintain a DUNS number
- Annually update information with Central Contractor Registry (CCR)
- Follow Davis-Bacon Wage Act
- Follow “Buy American” provisions
- Comply with NEPA regulations
- Complete Section 106 Review
- Develop a Waste Stream Plan

Invoices

Process

- Can be turned in monthly or more often
- Must include the (new) invoice forms, proof of obligation, proof of payment, and all applicable Buy American
- Remember: Davis-Bacon, monthly reporting, and all other programmatic compliance requirements must be up-to-date

New Information

- Need address for every vendor or contractor that you pay including zip+4
- On the new form it will calculate your payment for you based on your budget
- There is a LOT less room for error and we will be able to check them more quickly

Processing

- *Ideally* invoices can be processed and paid in about 3 weeks
- A HUGE part of that depends on you getting us the right information
- We are constantly working on our process to make everything go smoothly

Historic Preservation

BREAK: 15 minutes

Davis-Bacon

***Note: In this portion of the presentation, "subcontractors" refers to both primary contractors and their subcontractors.**

EECBG / ARRA DBA REQUIREMENTS

- Projects involving construction, alteration, repair, or energy savings retrofits or installations that are funded “in whole or in part” by EECBG / ARRA funds must comply with the prevailing wage requirements of the Davis-Bacon and Related Acts.

- Projects that do not involve buildings, such as streetlight and traffic signal retrofits, are also included.

EECBG / ARRA DBA REQUIREMENTS

- DBA requires subcontractors to pay laborers & mechanics wages **and** fringe benefits determined by the U.S DOL to be prevailing for the county in which the site of work is located.
- The DBA "prevailing wage" is the combination of the hourly wage rate and any hourly fringe benefits listed in the applicable DBA Wage Determination.
- **The subcontractor's obligation to pay no less than the prevailing wage can be met by paying the total of hourly wages and hourly fringe benefits entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits.**
- Laborers & mechanics *must* be paid on a weekly basis.
- Subcontractors *must* submit original Certified Weekly Payrolls to Subgrantee.

EECBG / ARRA DBA REQUIREMENTS

- DEFINITION OF LABORERS & MECHANICS: The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. [29 CFR 5.2.]

EECBG / ARRA DBA REQUIREMENTS

- DEFINITION OF LABORERS & MECHANICS: Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541 are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of 29 CFR 541, are laborers and mechanics for the time so spent. [29 CFR 5.2.]

- 29 CFR 541 EXEMPTION CRITERIA: Do not assume that an employee meets these criteria simply because he/she has the title of "manager" or "supervisor". You must examine the criteria to ensure that the exemption applies.
- (See 29 CFR 541 at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl. Search for Title 29, Labor.)

EECBG / ARRA DBA REQUIREMENTS

- DBA does not apply to city/county employees, even if they are performing laborer/mechanic work.

- DBA does not apply to energy auditors, engineers, designers, architects, consultants, etc.

EECBG / ARRA DBA REQUIREMENTS

- If the EECBG-funded project is part of a larger project, the *entire* project is subject to DBA.

- If, however, the work can logically be segregated into two separate and distinct projects, EECBG funds one specific project, the work is not performed together (i.e., the work using non-ARRA funds is completed prior to or after the ARRA-funded work and the crews are not working together), and separate contracts are used for the two separate projects, the non-ARRA funded work would not be subject to the DBA.

- If the *entire* project is subject to the DBA requirements, Certified Weekly Payrolls would be required for the entire project.

EECBG / ARRA DBA REQUIREMENTS

- Volunteers: There are no exceptions to DBA coverage for volunteer labor under ARRA. Therefore, an EECBG-funded project requires that all workers on the job site must be paid DBA wages and fringe benefits.
- Electric Cooperatives: Utilities cooperatives are not given the same DBA exemptions that are afforded to regulated public utilities, as they are not a state or local government entities. Employees of local electric cooperatives must be paid DBA wages and fringe benefits when performing work on an EECBG-funded project. The local electric cooperative will be required to submit Certified Weekly Payrolls to the city or county.

EECBG / ARRA DBA REQUIREMENTS

- **Why does the Tennessee Prevailing Wage no longer apply?**
  The Tennessee Department of Labor has provided guidance to ECD that the Tennessee Prevailing Wage does not apply to ECD's grant programs that are funded solely by federal dollars. Specifically, the Tennessee Prevailing Wage does not apply to the EECBG program as the program is funded by the federal American Recovery and Reinvestment Act of 2009.

Summary of Subgrantee Roles & Responsibilities:

- Flow down DBA language / DBA Contracting Provisions, Special Terms & Conditions, and Wage Determination in all Bid Specs and contracting materials;
- Receive Certified Weekly Payrolls and related documents from subcontractors and review for accuracy;
- Work to correct any problems or Payroll errors;
- Send copies of Payrolls and related documents, preferably via email, to ECD;
- Visit worksites to (1) interview workers and verify the information submitted by the contractor on the Payrolls (i.e., were the employees actually paid the amounts reported by the contractor?) and (2) confirm the employer has posted the DBA Rights poster and applicable Wage Determination;
- Provide data for Semi-Annual DOE / DOL DBA Compliance Report;
- Notify ECD of any non-compliance with DBA requirements; and
- Maintain all DBA related records for three years following the submission of the Final Report to ECD.

Summary of Subcontractor Roles & Responsibilities:

- Subcontractors must pay laborers and mechanics employed directly upon the site of the work no less than the locally prevailing wages, including fringe benefits, listed in the applicable DBA Wage Determination for all hours worked on the site of the work.
- Subcontractors must post the DBA Rights Poster and applicable Wage Determination(s) on the job site in a prominent and accessible place where they are easily visible.
- **Subcontractors must pay employees weekly!!!!!!!!!!!**
- Subcontractors must submit Certified Weekly Payrolls and any requested supporting documentation to Subgrantee.

Summary of Subcontractor Roles & Responsibilities:

- Records to maintain for three years after final payment:
  - Name, address, and Social Security number of each employee;
  - Each employee's work classifications;
  - Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents;
  - Daily and weekly numbers of hours worked;
  - Deductions made;
  - Actual wages paid;
  - If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected; and
  - If applicable, detailed information regarding approved apprenticeship or trainee programs.

EECBG / DBA PROCESS: PRE-BID WAGE DETERMINATIONS

- The DBA / U. S. DOL Wage Determination attached to your Grant Agreement may no longer be current. You may also need a different category depending upon your project.

- To find the most recent / current Wage Determinations:
  - go to http://www.wdol.gov/dba.aspx#0
  - Click "Browse by state/territory" and find Tennessee
  - Select the appropriate county and category (e.g. building, heavy, or highway)

WAGE DETERMINATIONS (CONTINUED)

- The “building” category applies to: (a) HVAC, Windows, Doors, & Insulation Retrofits; (b) Lighting Retrofits to a building; (c) Pumps & Motors Retrofits inside water/wastewater treatment plant buildings; (d) Solar Panel Installations; and (e) the Installation of Remote Read Water Meters.

- The “highway” category applies to the alteration, repair, or replacement of: (a) Street Lights; (b) Traffic Signals; and (c) Lighting Retrofits to Walking Trails.

- The “heavy” category applies to: (a) Pumps & Motors Retrofits outside water/waste water treatment plant buildings; and (b) Certain Outdoor Lighting Retrofits.

EECBG / DBA PROCESS: PRE-BID

- Review and complete Acknowledgment of Davis-Bacon Requirements and Pre-Bid Project Wage Rate Sheet. Submit to Molly Cripps (molly.cripps@tn.gov) / ECD for review and approval.

- The purpose of the Pre-Bid Project Wage Rate Sheet is to: (1) spot worker classifications for which a conformance may need to be requested from the U.S. DOL; (2) verify that the appropriate Wage Determination category and most recent modification date will be included in the Bid Specifications; and (3) identify projects that are not approved EECBG activities but Subgrantee assumes can be included.

EECBG / DBA PROCESS: PRE-BID

- Prepare Bid Specifications and submit to David (david.g.goodman@tn.gov) / ECD for review and approval.

- Bid Specs should notify bidders that DBA applies. Information provided to any and all bidders shall include the statement: "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts."

- Bid Specs must include the applicable Wage Determination(s) and Subgrant Flowdown Provisions / Special Terms & Conditions.

EECBG / DBA PROCESS: PRE-BID

- Monitor Wage Determination: The Wage Determination included with bid specifications on the date requests for bids are issued will remain in effect for the duration of the project unless: (1) a wage modification is published after requests for bids are issued but no less than 10 days prior to the opening of bids; or (2) a wage modification is published after requests for bids are issued but less than 10 days before the opening of bids and there is reasonable time to notify bidders of the modification before the opening of bids.
- If a modification is issued between the date requests for bids are issued but no less than 10 days prior to the opening of bids, you must notify the bidders of the modification so that they may adjust their bids. If a modification is issued between the 10 day point and the opening of the bids, you must make a determination as to whether there is reasonable time to notify the bidders of the modification so that they may adjust their bids. If you decide that there is no time, create a record of this decision and retain a copy of such record. Once bids are opened, the wage determination included in the request for bids remains in effect as long as the contract is awarded within 90 days from the date of bid opening. [See 29 CFR 1.6(c)(3).]

EECBG / DBA PROCESS: POST-BID

- Conduct debarment check at https://www.epls.gov/ to ensure each subcontractor is able to work on federally funded projects. Contact David Goodman / ECD regarding results and subcontractor's DUNS number.

- **Ensure all applicable Wage Determinations for the county at issue, Davis-Bacon contracting language (see your Grant Agreement), and Subgrant Flowdown Provisions / Special Terms & Conditions are attached to subcontracts.**

- Have every subcontractor review the instructions for and complete and sign the Pre-Construction Project Wage Rate Sheet. Review the Wage Sheet to ensure that the subcontractor has addressed both hourly wages and hourly fringe benefit. Submit to Molly Cripps / ECD for review and approval.

EECBG / DBA PROCESS: POST-BID

- If subcontractor indicates that apprentices or trainees will be employed, have subcontractor review the DBA: Documentation Required for Apprentices and Trainee Form and submit the required information prior to or with the first Certified Weekly Payroll.

- Have every subcontractor review the Authorization of Other Deductions Form. If employee deductions fall into a category covered on the Form, the subcontractor ***and*** the employee must execute the Form, and the subcontractor must submit the Form prior to or with the first Certified Weekly Payroll.

- Have every subcontractor review Information and Documentation to be Submitted by Bona Fide Business Owners Form. If applicable, the subcontractor must execute and submit the Form prior to or with the first Certified Weekly Payroll.

- If you own at least 20% of your business and are actively engaged in its management, you are not required to report the hours you engage in physical labor on the CWP. However, you must report the hours worked by your employees.

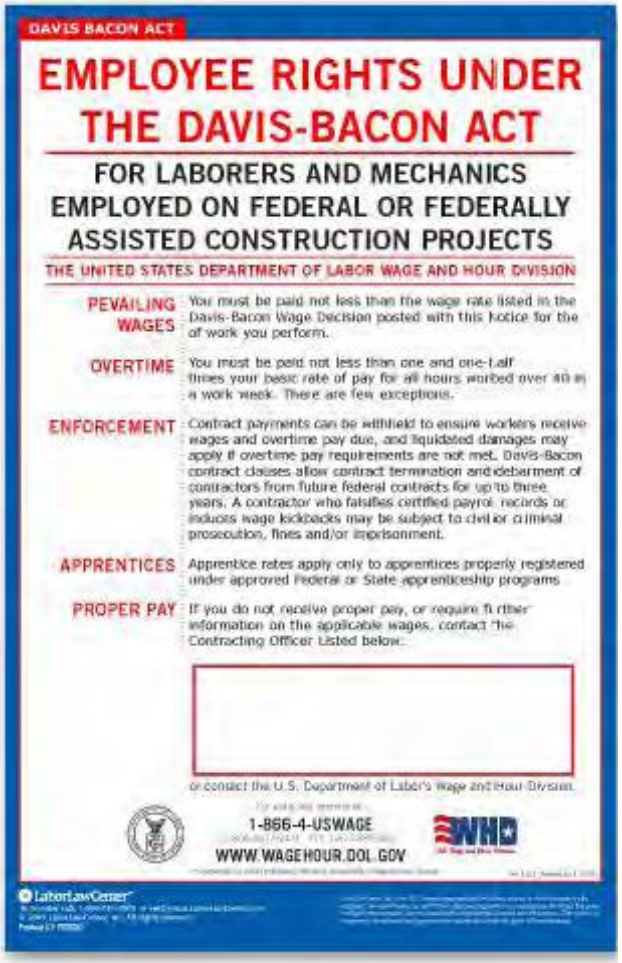
EECBG / DBA PROCESS: POST-BID

- Have every subcontractor review the Instructions to and the template for the Certified Weekly Payroll Form WH-347. These are attachments 7 & 8 to the Subgrantee Information Packet.

- Notify David / ECD regarding the date you expect your project to begin and the estimated duration.

EECBG / DBA PROCESS: DURING JOB

- Davis-Bacon Rights Poster must be displayed at the work site along with the applicable Wage Determinations
- Poster available in English & Spanish http://tn.gov/ecd/recovery/eecbg.html.



DAVIS BACON ACT

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PEVAILING WAGES: You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this notice for the of work you perform.

OVERTIME: You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT: Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES: Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs

PROPER PAY: If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer Listed below:

or contact the U.S. Department of Labor's Wage and Hour Division

1-866-4-USWAGE

WWW.WAGEHOUR.DOL.GOV

DBA PROCESS: DURING JOB

- **Contact Molly Cripps / ECD (1-800-342-1340) if you suspect intentional misclassifications of workers or underpayment of wages or if you receive a complaint alleging violations of Davis-Bacon or CHWSSA.**
- **ECD must investigate and attempt to resolve all complaints.**

EECBG / DBA PROCESS: DURING JOB

- ***Ensure that the subcontractor is paying employees on a weekly basis and submitting the ORIGINAL Certified Weekly Payroll on time.***

- The subcontractor has 7 calendar days from the end of the week worked to pay employees. The subcontractor then has 7 calendar days from the date the employees are paid to submit the Certified Weekly Payroll to the Subgrantee.

- Review Certified Weekly Payrolls for accuracy as soon as possible after receipt. Follow the Davis-Bacon Compliance Checklist For Review of Certified Weekly Payrolls.

EECBG / DBA PROCESS: DURING JOB

- If any additional information, forms, or Payroll corrections are required, you must work with the subcontractor to resolve any issues and obtain confirmation of restitution owed / back wages paid. Keep track of this information. If the subcontractor refuses to comply with Davis-Bacon requirements, notify Molly Cripps / ECD.

- ***Note: ECD may withhold payment to Subgrantees until the information is provided or the mistake is fixed, as the Subgrantee is not incompliance with its subgrant if its subcontractor's Payrolls are not correct.**

EECBG / DBA PROCESS: DURING JOB

- **Contract Work Hours and Safety Standards Act (CWHSSA):** Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the CWHSSA if the prime contract exceeds $100,000.

- The basic hourly rate used for computing CWHSSA overtime compensation shall not be less than the basic hourly wage rate set forth in the applicable DBA Wage Determination, excluding any hourly fringe benefits listed. Cash payments made to a DBA/CWHSSA covered worker for the purpose of satisfying DBA fringe benefit requirements *are not included* in determining the basic hourly wage rate for overtime.

- Contractors are assessed liquidated damages for overtime pay violations (in addition to paying back wages). Subgrantees should collect liquidated damages from subcontractors for overtime pay violations. Checks should be made out to the U.S.Treasury and should be mailed to Molly Cripps / ECD. ECD will mail the checks to our DOE EECBG Contracting Officer. The liquidated damages charge is $10/day where the overtime was improperly paid.

- *For example, a Davis-Bacon covered laborer works 12 hour days for 5 days in a week (60 hours total), and the employer does not properly pay the overtime hours. Starting on day four of the week, the laborer crosses the 40 hour threshold and begins to work overtime hours. Thus, the employee worked overtime hours on two total days. The liquidated damages charge would be $20 = $10/day x 2 days worked where overtime was not properly paid.

EECBG / DBA PROCESS: DURING JOB

- Once you have determined that the original or corrected Certified Weekly Payroll is accurate, forward a copy to Molly Cripps / ECD along with copies of any related forms.

- ECD must determine that a Subgrantee and its subcontractors are in compliance with Davis-Bacon and CWHSSA before it will reimburse a Subgrantee for the cost of labor provided by its subcontractors.

EECBG / DBA PROCESS: DURING JOB

- Visit job sites and conduct Employee Interviews to better verify the information being received.
- Information provided during Employee Interview is confidential!
- Use the Record of Employee Interview Form to document the information obtained during the interview.
- Conduct a desktop review by comparing the information obtained to that in a Certified Weekly Payroll. Investigate any discrepancies.
- Forward completed Record of Employee Interview Forms to Molly Cripps / ECD.

EECBG / DBA PROCESS: DURING JOB

- Employee interviews must be conducted by the Subgrantee or a grant administrator. As many employees as possible in each worker classification should be interviewed, but, at a minimum, at least two employees in each classification.

- Depending on the duration of the project, Subgrantees should begin interviewing employees after receipt of at least one Certified Weekly Payroll so that the Subgrantees can compare the information set forth on the Payroll with the information received during the interviews.

- Although on-site / in-person interviews are preferred, telephone or mail interviews are permitted. Should interviews be conducted by telephone or mail, please indicate such on the Record of Employee Interview.

EECBG / DBA PROCESS: DURING JOB

- **Contact Molly Cripps / ECD if you suspect intentional misclassifications of workers or underpayment of wages or if you receive a complaint alleging violations of Davis-Bacon or CHWSSA.**
- **ECD must investigate and attempt to resolve all complaints.**

EECBG / DBA PROCESS: DURING JOB

- **DOE / DOL Semi-Annual Davis-Bacon Report:** ECD is required to report information regarding Davis-Bacon compliance on a semi-annual basis. Upon completion of your project, email the following information to Molly Cripps / ECD:

  -Number of contractors/subcontractors against whom complaints were received.

  -Number of investigations* completed by Subgrantee.

  -Number of contractors/subcontractors found in violation.

  -Amount of wage restitution found due:

  Davis-Bacon and Related Acts

  CWHSSA (Overtime Violations)

  -Amount of back wages paid:

  Davis-Bacon and Related Acts

  CWHSSA (Overtime Violations)

EECBG / DBA PROCESS: DURING JOB

DOE / DOL Semi-Annual Davis-Bacon Report:

- A “violation” is a failure to pay the appropriate hourly wages, both straight and overtime, and hourly fringe benefits.
- An "investigation" is the activities taken to resolve suspected improper payment of wages and/or benefits, even if it is determined that your initial thought of a violation is not true (e.g. the worker was classified properly).
- Subgrantee should track receipt of payrolls, review of payrolls, interviews performed, and site visits; however, such activities are not considered an investigation until it appears someone has not been properly paid.
- Actions taken to correct Payroll errors do not rise to the level of an investigation until such actions result in a suspicion of improper payment of wages and/or benefits.
- Where it appears that the subcontractor continually makes the same errors, continually submits late payroll records, fails to post DBA Rights Poster and Wage Determinations after being warned, and/or fails to pay proper wages and benefits, the actions are considered willful non-compliance. Such actions must be reported to ECD. ECD will alert the DOE Project Officer and Contracting Officer of the issues.

EECBG / DBA PROCESS

- ***Throughout Duration of Project:***

  -READ the weekly EECBG email sent by David Goodman. This often contains updates regarding Davis-Bacon requirements.

  -Check the EECBG website http://tn.gov/ecd/recovery/eecbg.html.

  -Contact David Goodman or Molly Cripps if you have any questions.

EECBG / DBA GUIDANCE

- All persons responsible for monitoring DBA compliance for Subgrantees should review the following DOE DBA Guidance. Subcontractors should also be encouraged to review these materials as well.
- **DOE DBA Desk Guide** http://www1.eere.energy.gov/wip/pdfs/doe_dba_desk_guide.pdf.
- **DOL Field Operations Handbook for DBA / DBA Related Acts & CWHSSA http://www.dol.gov/whd/FOH/FOH_Ch15.pdf**
- **August 24, 2010, Webinar**: Covers background on Davis-Bacon and Related Acts and describes the implications for grant and subgrant recipients. Materials include a Webinar PowerPoint Presentation and Audio File of the Webinar -- http://www1.eere.energy.gov/wip/davis-bacon_act.html
- **September 27, 2010 DBA Compliance Webinar for DOE WAP, SEP, EECBG Grantees, Sub-Grantees, and their Contractors:** Materials include a Webinar PowerPoint Presentation, Audio File of the Webinar, Certified Payroll Exercise Instructions, Certified Payroll Exercise Answer Key, and Sample Certified Payroll -- http://www1.eere.energy.gov/wip/davis-bacon_act.html.
- **October 7, 2009 Webinar on Certified Payrolls:** Materials include a Webinar Transcript, Audio File of the Webinar, and Sample Department of Labor Payroll Form.

EECBG / DBA GUIDANCE

- For answers to FAQs about the Davis-Bacon Act, visit the DOE EERE searchable FAQ database at http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10.

- **DOE General Counsel's Hotline** (GCHotline FAQ) for legal questions related to the American Recovery & Reinvestment Act (ARRA), including the Energy Efficiency Conservation Block Grant (EECBG) http://www.gc.energy.gov/GCHotlineFAQ.htm.

ECD / EECBG / DBA FORMS

- EECBG Davis-Bacon Process Checklist
- Acknowledgment of Davis-Bacon Act Requirements & Pre-Bid Project Wage Rate Sheet
- Instructions & Template -- Project Wage Rate Sheet
- Documentation Required for Apprentices and Trainees
- Information & Documentation to be Submitted by Bona Fide Business Owners
- Acknowledgment of Other Deductions
- Record of Employee Interview & Instructions
- Davis-Bacon Compliance Checklist for Review of Certified Weekly Payroll

Sample: Pre-Construction Project Wage Rate Sheet

PROJECT WAGE RATE SHEET*

Community Name: Town of Anywhere Contract Number: GG #	U.S. DOL Wage Determination Modification Date: 10 / 01 / 11
General Contractor or Subcontractor Name: ABC Electric + HVAC, LLC	Project County: Somewhere County

Employee	Tasks to be Performed	Work Classification	Hourly Rate	Fringe Benefits**
Worker Bee	HVAC System Installation	HVAC Mechanic	$18.00	$7.00 an hour ($2.00 Vacation Pay; $3.00 Health Insurance; $2.00 401 K)
Jack O. Alltrades	HVAC Duct Installation	Sheet Metal Worker	$22.00	$9.00 an hour ($2.50 Vacation Pay; $3.50 Health Insurance; $3.00 401 K)
Mister Fixit	HVAC Pipe Installation	Pipefitter	$20.00	$8.00 an hour ($2.50 Vacation Pay; $3.50 Health Insurance, $2.00 401K)
Handee Mann	Fetch/Carry for Installations + Site Clean Up	Laborer: Common/ General	$12.00	$4.00 an hour ($4.00 cash in lieu of benefits)

* This is a breakdown of the hourly rate plus the company-paid fringe benefits for each employee working on this project.

** List what makes up the fringe (e.g. 401K, health insurance).

Patty Payroll
Name

Patty Payroll 12/07/10
Signature Date

Sample: Certified Weekly Payroll

***Note: The calculations for Handee Mann are incorrect. Can you identify the errors?**

U.S. Department of Labor
Wage and Hour Division

PAYROLL
(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

U.S. Wage and Hour Division
Rev. Dec. 2008
OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR ☑ OR SUBCONTRACTOR ☐ ADDRESS: ABC Electric + HVAC, LLC / 123 Main Street, Anywhere, TN 37000

PAYROLL NO.: 1 | FOR WEEK ENDING: 01/09/11 | PROJECT AND LOCATION: Anywhere City Hall, 456 Main Street | PROJECT OR CONTRACT NO.: GG #00001

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE: M 3	T 4	W 5	Th 6	F 7	Sa 8	Su 9	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX	Health Ins.	401 K	OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
Worker Bee #1234		HVAC Mechanic	o										$288	$20	$60	$24	$10		$114	$686
			s	2	2	2	5	5			16	$18.00	$800							
			o																	
			s																	
Jack O. Alltrades #5678		Sheet Metal Worker (Duct Work)	o										$330	$30	$90	$24	$20		$164	$786
			s			1	7	7			15	$22.00	$950							
			o																	
			s																	
Mister Fixit #9999		Pipefitter (HVAC Pipes)	o										$280	$27	$80	$24	$16		$147	$753
			s	2	2	2	4	4			14	$20.00	$900							
			o																	
			s																	
Handee Mann #1010		Laborer: Common/Gen.	o				2	2			4	$18.00	$360	$10	$30				$40	$580
			s			2	8	8			18	$12/$14	$620							
			o																	
			s																	

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Sample: Certified Weekly Payroll

Date 01/14/11

I, Patty Payroll (Name of Signatory Party) Payroll Clerk / Bookkeeper (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by ABC Electric + HVAC, LLC (Contractor or Subcontractor) on the Anywhere City Hall (Building or Work); that during the payroll period commencing on the 3rd day of Jan, 2011, and ending the 9th day of Jan, 2011, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said ABC Electric + HVAC, LLC (Contractor or Subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

Health Insurance + 401K — Employee Contributions

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☒ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Handee Mann (Laborer)	Not yet eligible for benefits — $4.00 an hour cash paid in lieu of benefits

REMARKS:

NAME AND TITLE	SIGNATURE
Patty Payroll / Payroll Clerk	Patty Payroll

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Disclaimer

- **This portion of the presentation is intended as general information only and does not carry the force of legal opinion.**

- **ECD has provided this information and developed and disseminated DBA related forms and materials in an effort to educate its EECBG Subgrantees regarding the requirements of Davis-Bacon and related acts. We will make every effort to keep this information current and to correct errors brought to our attention.**

- **The *Federal* Register and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor.**

Buy American

Web Resources

- Buy Am Guidance: http://www1.eere.energy.gov/recovery/buy_american_provision.html
- Buy Am Desk Guide: http://www1.eere.energy.gov/recovery/pdfs/buy_american_desk_guide.pdf
- Buy Am Waivers: http://www1.eere.energy.gov/recovery/ba_waivers.html
- Buy Am FAQ: http://www1.eere.energy.gov/recovery/buy_american_faq.html#q1

Buy American

- "None of the funds appropriated for or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless
  - —All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States." (2 CFR 176.70)

What is a manufactured good?

- **Manufactured Good:** "Good brought to the construction site for *incorporation into the building or work* that has been processed into a specific form and shape; or combined with other raw material to create a material that has different properties than the properties of the individual raw materials." *See 2 C.F.R. 176.140(a)(1).*
- Only manufactured goods that **are permanently attached to or fixed to real property** are covered by the Buy American Recovery Act provisions.

What is a manufactured good?

- There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States. (See 2 CFR 176.70(a)(2)(ii))
- So what constitutes “manufacturing?” A skillful and “substantial transformation” into a unique good with unique qualities and uses. I.e., More than mere assembly or packaging.

What is “in the U.S.?”

- Production or manufacturing facility is physically located in the United States or its territories
- Canada, Mexico, or Free Trade countries are NOT the U.S.

Exceptions

- **Non-availability** (not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quality)
- **Unreasonable cost** (will increase cost of the *overall project* by more than 25%)
- **Inconsistent with the public interest**

Exceptions

- There is a process to go through to get an exception; it is something we would do together
- It will take several weeks and a considerable amount of information is needed for it to be approved

Exceptions

- See the DOE's Buy Am Waiver website for the latest updates
- Must submit the waiver/exception with your invoice
- Some that might apply
  - Electronic ballasts for florescent lamps
  - Programmable thermostats
  - Variable refrigerant flow zoning HVAC system
  - Parts and pieces of solar panels

Waivers

- “De Minimus” waiver for incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

Documentation

- Contractors and vendors should be held responsible for complying with the Buy American provisions.

- Grantees, sub-recipients and subawardees should ask contractors and vendors for letters of certification.

"Appropriate" Documentation

- Receipts for items produced domestically indicating such
- A documented certification from the contractor, vendor, distributor, supplier, or manufacturer verifying that the product was manufactured domestically
- Detailed and verifiable information supporting the claim that the manufactured good has undergone substantial transformation in the United States and/or
- Other reasonable documentation per the discretion of the state, local, or tribal government financial assistance recipient demonstrating compliance with the Buy American provisions

Required Documentation

- A letter or statement from the manufacturer or a third-party is required
- Certification from your contractor is not enough
- Must be submitted before or with your invoice for that equipment

Common Questions

Deadline

- Your contract states that you must complete the project by May 31, 2012
- Previously, contract periods could be extended for extenuating circumstances
- Currently, we do not appear to have that luxury, as DOE has directed that this period is firm.

Timeline

- Receive Notice to Proceed
- Complete bidding process
- Choose contractor or vendor
- Check for debarment/Send DUNS to DG
- Finalize Project Wage Sheet with contractor
- Send Wage Sheet to DG/MC for approval
- Send DG project start date
- Begin project!
- Receive weekly wage reports from contractor and review for accuracy
- Send weekly wage reports to MC
- Conduct employee interviews and complete desktop reviews

Project is Under/Over Budget

- Over
  - Call David, we'll figure it out
- Under
  - You can add other similar projects
    - For example, if you are already doing building retrofits, you can add more
  - Send a new Activity Worksheet with info on the new project, energy/$ savings and why you are changing the project
  - Wait for approval and then complete any other necessary paperwork (Section 106, Davis-Bacon, etc)

Inventory Control

- If you purchase a piece of “equipment” costing more than $5,000, it has to be tagged and recorded
- If you purchase 1,000 lightbulbs and the total is more than $5,000, you do not have to label or record each one
- You will have to turn in info on your 90-day report if you do have any of this equipment

Leveraged Funds

- Any Admin hours that are not reimbursed would be leveraged funds
- Keep track of them from month-to-month and report them on the monthly report
- In the final report (before the last payment) you will submit proof of those

Budget Revisions

- Most budget revisions will not have to go through the contracting process
  - For example, if your bid comes in over budget and the community kicks in more to cover it, just send that info to DG
  - If you need to shift minor amounts of funding between line items, just send that info to DG
- Some budgets do need to be revised now
  - If you need to shift major amounts of funding, or create a new line item, OCR must approve that.

Monitoring

- See the website for the Monitoring Guide
- Pay close attention to the Monitoring Checklist at the end
- You will have an on-site monitoring visit
- It will occur when you are doing the work, most likely
- Goal is to find out what is going well and what you have missed before anything becomes a big problem

Monitoring

- Will be done by an ECD employee
- Visit will last a few hours and will focus on ARRA compliance – Buy American, reporting, Davis-Bacon, etc.
- You will receive a letter from DG after the visit with any concerns
- The people doing the day-to-day work, the fiscal people, any administrator or general contractor needs to be there

What if you have messed up?!

- It’s ok. Just let us know ASAP so we can figure out what to do about it!

Success Stories?

Send us those any time!

Title VI Training

- Under directive by the TN Human Rights Commission, all EECBG grantees, subgrantees, contractors and subcontractors should undergo Title VI training.
- Convenient online training is now available at: https://www.tnecdit.net/TitleVI_Training/ .
- Enter a username and then create a password.
- IT will be unable to recover your password because it will be encripted.

Questions?

Contact Us

Energy Policy Office
TN Dept of Economic & Community Development

Toll-free: 1-800-342-1340

http://tn.gov/ecd/recovery/eecbg.html

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