



# Energy Efficiency Conservation Block Grant Prevailing Wage Compliance and Certification

*Informational Webinar  
January 6, 2010 from 1-4pm  
Hearing Room A & Live Webcast*

# Webinar Welcome

- **California Energy Commission**
  - John Sugar, Special Projects Office
  - Reneé Webster-Hawkins, Chief Counsel's Office
- **California Department of Industrial Relations**
  - Bob Roginson, Chief Counsel for Division of Labor Standards Enforcement
  - Gary O'Mara, Office of the Director's Legal Counsel
  - Greg Govan, Chief of Division of Labor and Statistics Research

# Housekeeping

- Housekeeping Items
- WebEx participants: Please e-mail questions/comments to [EECBG@energy.state.ca.us](mailto:EECBG@energy.state.ca.us)

# Webinar Objectives & Outline

- **Objectives**

- Educate EECBG applicants about key requirements for compliance with federal and state prevailing wage laws for public works projects, and
- Revise and clarify instructions for submitting applications for Energy Efficiency Conservation Block Grant (EECBG)

- **Outline**

- Federal: Key requirements of Section 1606 of ARRA and Prevailing Wage Law under the Davis-Bacon Act
- California: Key requirements of the State Prevailing Wage Law under the California Labor Code
- Solutions: Attachment K and Revised Attachment E
- Q&A

## Late Breaking News: SHPO

The Energy Commission has recently received permission from the Office of Historic Preservation to participate in the review and consultation process pursuant to Section 106 of the NHPA.

- If you HAVE NOT yet submitted your project(s) for review and consultation to the SHPO: Do NOT send them to SHPO. Instead, simply include the package you intended to submit to the SHPO with your EECBG application by the Application Deadline.
- If you HAVE already submitted your project(s) for review and consultation to the SHPO: The Energy Commission is working with the SHPO to expedite the review of those proposals.

# EECBG Addendum #2

- An Addendum #2 to the EECBG Solicitation will be released on Monday, January 11, 2010 which will include the following:
  - Instructions consistent with the new procedure for review and consultation under Section 106 of the NHPA.
  - Instructions consistent with this webinar concerning Attachments E & K.
  - Revised Terms and Conditions for the EECBG grants.

## Legal Disclaimer

- This presentation is intended to offer information and technical assistance in completing the applications for the EECBG solicitation.
- Nothing in this presentation should be construed or accepted as legal advice to local jurisdictions or contractors.
- Any questions requiring a legal opinion, interpretation or recommendation should be directed to your county counsel, city attorney, or in-house counsel.
- This powerpoint presentation will be posted to the EECBG website immediately following this presentation for applicants' reference.

## Key Requirements of Section 1606 of ARRA

- Section 1606 of ARRA specifically requires that all laborers and mechanics employed by contractors and subcontractors on any project “funded directly by or assisted in whole or in part by” ARRA funds be paid prevailing wages as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (DBA).
- Requirement does not apply to State and local governments that use their own employees to perform this work.
- If the entity receiving ARRA funds for such projects contracts out the work, it must ensure that the DBA requirements flow down to the entities that employ the laborers and mechanics to do the work.

# **USDOE Guidance on DBA & EECBG**

**December 17, 2009**

- “As a consequence of the required DBA contract clauses, the recipient of the Recovery Act funds is responsible for the compliance by its subgrantees, contractors, and their subcontractors.”
- “Grantees/subgrantees and contractors/subcontractors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.”
- “A grantee or subgrantee and contractors/subcontractors contracting out work on a covered project must provide the wage determination to the contractors or subcontractors 10 calendar days prior to issuing the solicitation.”

# USDOE Guidance on DBA & EECBG

December 17, 2009

- “Grantees/subgrantees and contractors/subcontractors on these projects funded or assisted in whole or part by Recovery Act funds shall maintain payrolls and basic records relating to payroll during the course of the work and preserve them for a period of three years thereafter for all laborers and mechanics working on the project.”
- **“They must also ensure that all laborers and mechanics on a project funded or assisted in whole or part with Recovery Act funds are paid on a weekly basis and must submit weekly certified payroll records to the contracting and administering agency.”** *(USDOE wrote this in bold.)*

# Who is Covered under DBA

- Under ARRA, work covered by DBA includes:
  - Labor or mechanical work at the work site
  - Construction, alteration and/or repair
  - Painting and decorating
- Under ARRA, work not covered by DBA includes:
  - Home energy ratings, energy audits, building inspections
  - Bona fide executive, administrative and professional employees
  - Supervisors who do not spend more than 20% of their time performing labor or mechanic duties
- Apprentices and trainees may be paid less than prevailing wage only if participating in an program approved or recognized by USDOL or Cal DIR.
- Volunteers must be paid prevailing wage unless specifically exempted by federal statute (i.e. AmeriCorps, VISTA).

## What Projects are Covered under DBA

- Under ARRA, work covered by DBA includes:
  - All types of work done on a “public building” or a “public work.”
  - “Public work” includes projects funded in whole or in part by ARRA.
    - Energy efficiency construction and retrofits
- Applies to time spent at the work site
  - Not back at the office
  - Not traveling to the site
- \$2000 threshold applies to the amount of the prime contract to the local jurisdiction, not any individual subcontracts

## **Responsibility for DBA compliance is top-down**

- USDOE is responsible for compliance for federal EECBG as the “awarding agency.”
- Energy Commission is responsible for compliance State EECBG as the “administering agency.”
- Local jurisdictions are responsible for compliance of individual grant as “contracting agencies.”

*Note: Direct liability under state prevailing wage law is different.*

# Key DBA Requirements and Responsibilities

- Basic Administrative Responsibilities under DBA
  - Notices and posters
  - Record-keeping
  - Reporting
- Local Jurisdictions must:
  - Attach wage determinations to solicitations and subcontracts
  - Ensure that contractors adhere to all DBA requirements by including flow-down provisions in subcontract and monitor compliance
  - Submit certified payroll record for all lower tier contractors on WH-347 to Energy Commission on a weekly basis
- Contractors must:
  - Comply with all DBA requirements including weekly payroll
  - Post the wage determination and a [Davis-Bacon poster \(WH-1321\)](#) at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen
- EECBG grant terms and conditions (T&Cs) will include specific provisions that detail the responsibilities of local jurisdictions.

## **USDOL & USDOE Resources on DBA**

- **USDOL General Wage Determinations**  
[www.wdol.gov](http://www.wdol.gov)
  - By county, then construction type, then job classification
  - Ex: Electrician, plumber, sheet metal worker, laborer
- **USDOL DBA Regulations & Field Operations Handbook**
  - USDOL Recovery Act Information <http://www.dol.gov/whd/recovery/>
  - Prevailing Wage Resource Book  
<http://www.dol.gov/whd/recovery/pwrp/toc.htm>
  - 29 CFR Parts 1, 3, 5, 6 & 7
- **USDOL Weekly Payroll Form WH-347**  
<http://www.dol.gov/whd/forms/wh347.pdf>
- **USDOE EECBG DBA Compliance Q&A**  
<http://www.eecbg.energy.gov/davisbacon.html#oversight>

# California Prevailing Wage Laws

- Coverage of public works (California Labor Code §§ 1720 et seq)
- Wage Determinations and Job Classifications
- Administrative Requirements and Responsibilities

## Resources

- DLSR Wage Determinations at <http://www.dir.ca.gov/DLSR/PWD/>
- Public Works Manual:  
<http://www.dir.ca.gov/dlse/PWManualCombined.pdf>
- Division of Labor and Statistics Research Hotline:
  - **Classification: 415-703-4774**
  - **Coverage: 415-703-4240**
- DIR Public Works Training, January 21, 2010 in Costa Mesa  
<http://www.dir.ca.gov/dacpw/OnlineInvitation.pdf>
- DIR Public Works  
[http://www.dir.ca.gov/DAS/DAS\\_BuildingCompliance/BuildingCompliance.htm](http://www.dir.ca.gov/DAS/DAS_BuildingCompliance/BuildingCompliance.htm)

## **Addendum #1**

Prompted by December 17, 2009 USDOE guidance that required states to have “applicable wage determination” attached to all solicitations and agreements and resulting grants or contracts.

- **Attachment K:** Fulfills the Energy Commission’s duty to ensure that local jurisdictions have correctly determined whether federal or state prevailing wage applies to any work on their projects.
- **Revised Attachment E:** Ensures that applicant’s budget estimates – and cost-effectiveness assumptions – includes all required minimum prevailing wages.

# **Attachment K: Solutions and FAQs**

## **Q1: Why is Attachment K necessary?**

A1: Absent specific evidence, the Energy Commission assumes that prevailing wage laws apply to all labor and mechanical work on your EECBG projects. As the applicant, you are in a better position to know the types of projects you will be carrying out and the individuals that will be performing the work. Attachment K is a simple, uniform way for applicants to demonstrate and document whether federal or state prevailing wage laws apply to any part of your energy efficiency project, and to assist with identifying the applicable wage determinations.

## **Attachment K: Solutions and FAQs (continued)**

**Q2: All of our work will be performed by our own employees. Do we still need to fill out Attachment K?**

A: Yes. Simply check the appropriate boxes to document the basis of your determination that your project is exempt.

**Q3: Some of our activities will be performed by our own employees, and we will hire subcontractors for other activities. How do we fill out Attachment K?**

A: Under “Other” for question #2 for both federal and state, you may list which projects or activities will be exempt and which will subject to prevailing wage. You may attach additional pages if necessary.

## **Attachment K: Solutions and FAQs (continued)**

**Q4: We are opting for the Direct Equipment Purchase. I thought prevailing wage does not apply to equipment purchases. Do we still need to fill out Attachment K?**

A: Yes. The Direct Equipment Purchase option was provided to streamline the analysis of whether a project is “cost-effective” as defined by USDOE and the Energy Commission. Direct Equipment Purchase projects involve procurement and installation, and are deemed cost-effective as long as installation costs do not exceed 50% of the total project cost. The labor costs associated with installation are still subject to prevailing wage laws.

## **Attachment K: Solutions and FAQs (continued)**

**Q5: We are applying as a collaborative. Do we complete a single Attachment K or an individual one for each local jurisdiction?**

A: You may use your discretion. It may be easy for a small collaborative which is hiring a single subcontractor to fill out a single Attachment K, where a more complex set of projects for a larger collaborative might be best reflected individually. You may attach additional documentation, such as a simple spreadsheet, if that assists you in presenting the required information.

## **Attachment K: Solutions and FAQs (continued)**

**Q6: What is the “Responsible Official” required in question #4 under the Federal Davis Bacon Act?**

A: DBA requires each weekly payroll submitted to the Energy Commission to be “accompanied by a ‘Statement of Compliance,’ signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract .” The signature serves a legal certification of specific things including:

- That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

# Attachment K: Solutions and FAQs (continued)

## Q6: (Continued)

- That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- The accuracy of the information, information is correct and complete.

Each “Statement of Compliance” will be provided weekly by your Contractors to you on federal form WH-347. In turn, you are responsible for transmitting all of the WH-347 from each of your Contractors to the Energy Commission on a weekly basis. On Attachment K, you must identify the name and contact information of a person that the Energy Commission can readily contact if there is any question about any payroll transmittal. **Because of the legal importance of the timely and accurate payroll certification under federal law, you should identify a person with sufficient accessibility and authority to be responsive to any questions from state or federal officials.**

## **Attachment K: Solutions and FAQs (continued)**

**Q7: Who is the “authorized legal representative” who must sign Attachment K?**

A: This must be the city attorney or county counsel or their delegate. This form serves as the applicant’s independent legal determination of whether state or federal prevailing wage laws apply to any of the projects funded by EECBG, and must be signed by a person authorized to make that legal determination.

## Attachment K: Solutions and FAQs (continued)

**Q8: We have not yet gone out for bid for a subcontractor, so we do not know exactly what job classifications or number of individuals that will be employed. How are we supposed to complete the table under Section C?**

A: We are going to modify the instructions for Attachment K and ask for this information by the Application Deadline *only if the applicant has it available*. If the applicant does not include it with its application, it will be required to be submitted to the Energy Commission before work may begin under the grant Agreement.

Note: Applicants are strongly encouraged to forecast the federal and state wage determinations – and attach the applicable rates – based on what job classifications are likely to be employed (i.e., electrician, lighting technician, sheet metal worker), as this information is critical to your ability to estimate the contract labor costs reflected in Attachment E.

## **Attachment K: Solutions and FAQs (continued)**

**Q9: We will be hiring HVAC specialty workers for building projects, but I cannot find a federal general wage determination that applies. How do I compare whether federal or state prevailing wage is higher?**

A: We have submitted this question to USDOE, and are awaiting a response. At this point, you may complete your application including the state prevailing wage rates for the HVAC trade, and indicate in the table in Section C that your determination is “pending” while we await federal guidance on this issue.

# Revised Attachment E: Solutions and FAQs

**Note: The instructions for Attachment E and any related grant terms and conditions are going to be revised consistent with the information and instructions in this Webinar.**

The EECBG Guidelines prioritize “cost-effectiveness” as the primary factor in estimating the project budget and controlling costs under the grants.

Consistent with that policy, we will be revising Attachment E as follows:

1. Reallocations between line items identified on the Category Budget (Attachment E-1) will be permitted as long as:
  - The total reallocation does not exceed 10% of the total grant budget AND
  - The reallocation does not undermine the project’s cost effectiveness based on the assumptions supporting the project.
2. Estimates for all direct costs will continue to operate as maximums:
  - Direct Labor, Fringe Benefits
  - Direct Costs including Travel, Equipment, Materials, Supplies, Miscellaneous, Overhead

## Revised Attachment E: Solutions and FAQs (continued)

3. Budget detail for Non-Labor Contract Expenses (Attachment E-2) and Contract Labor (Attachment E-3) will operate as estimates only and are to be provided by applicants by the Application Deadline *only if the applicant has it available*.

Note: Even if the applicant does not have the budget detail to complete the Non-Labor Contract Expenses or Contract Labor tables, the applicant still must provide a total amount for those two budget categories, and include those amounts in the Category Budget (Attachment E-1) where they will be subject to the reallocation rule explained in Item #1 above.

# Revised Attachment E: Solutions and FAQs (continued)

## Business Process Notes

- Applicants are still required to report the applicable wage determinations to the Energy Commission when they are determined.
- Prior to the start of any work on the project, applicants will be required to transmit copies of completed subcontract agreements which include all flow-down provisions required by ARRA and federal and state prevailing wage laws, plus the applicable wage determinations for each job classification to be employed under the subcontract.
- For applicants that have not submitted all subcontract and prevailing wage information by the Application Deadline, there will be a special condition attached to the Scope of Work that make the transmittal of the subcontract and prevailing wage documentation to the Energy Commission a prerequisite to starting work.

## Revised Attachment E: Solutions and FAQs (continued)

**Q1: We are using volunteers for some of the installation work. How am I supposed to fill out Attachment E?**

A: The position taken by the United States Department of Labor (DOL) on this issue is reflected in a May 29, 2009 advisory letter, which is available at <http://www.dol.gov/whd/recovery/AdvisoryLetterHenderson.pdf>. In this letter, the DOL provides only two conditions under which volunteer labor is exempted from Davis-Bacon Act (DBA) prevailing wage requirements: (1) where a **statutory exception** is “specifically provided for in the particular related Act under which the projects funds are derived;” and, (2) where the compensation, e.g., rates of pay, living allowances, or other benefits provided to participants in volunteer programs is **specified by federal statute**.

## Revised Attachment E: Solutions and FAQs (continued)

**Q2: We are using job training program participants for some of the installation work. How am I supposed to fill out Attachment E?**

USDOL has stated that:

- Individuals who meet the following definition may be employed as **apprentices** on DBA projects: A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau.
- **Trainees** must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been so certified by that Administration.

If you are intending to pay persons less than the federal or state minimum prevailing wage for the journey-level job classification, you must attach the supporting documentation from USDOL or DIR that justifies the lower rate.

## **Revised Attachment E: Solutions and FAQs (continued)**

**Q3: For Direct Equipment Purchase proposals, potential contractors are simply quoting a per-unit total cost. How am I supposed to fill out Attachment E and break out Contract Labor?**

**A:** Because prevailing wage laws apply to Direct Equipment Purchase projects, your procurement processes must require your bidders to disclose the wages and fringe benefits that they will be paying individuals to perform the installation, and certify that they will comply with all prevailing wage requirements. You should ask for quotes that include that level of detail in support of the per-unit cost.

# Q&A from Audience

The instructions for Attachments E and K will be revised and posted as part of the EECBG Solicitation Package.

For more information on the EECBG Solicitation and Application process, go to:

<http://www.energy.ca.gov/recovery/blockgrant.html>

Please e-mail your questions/comments to  
[EECBG@energy.state.ca.us](mailto:EECBG@energy.state.ca.us)

The logo for The California Energy Commission. It features the text "The California" in a brown, serif font, followed by "ENERGY COMMISSION" in a bold, blue, sans-serif font. The text is overlaid on a stylized background that includes a map of California, a sun, and a wind turbine.

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