

GLEAMNS HUMAN RESOURCES COMMISSION

October 20, 2011

REQUEST FOR SEALED PROPOSALS

COUNTIES SERVED

Abbeville
Anderson
Edgefield
Fairfield
Greenwood
Laurens
Lexington
McCormick
Newberry
Oconee
Pickens
Richland
Saluda

CONSTRUCTION SERVICES FOR HVAC UPGRADE FOR COMMUNITY SERVICE BLOCK GRANT (CSBG) PROGRAM AT THE BREWER ANNEX

SOLICITATION NUMBER: P06-01-11

TYPE OF CONTRACT: FIRM-FIXED PRICE

PROPOSER'S CONFERENCE – WED, OCTOBER 26, 2011,
10:00AM AT BREWEX ANNEX, 301 N HOSPITAL ST,
GREENWOOD SC

PROPOSAL DUE DATE & TIME: 4:00PM, NOVEMBER 9, 2011

NUMBER OF COPIES TO SUBMIT: (1) ONE ORIGINAL PLUS (3) COPIES

SUBMIT YOUR SEALED PROPOSALS TO:

(Mail)

GLEAMNS HUMAN RESOURCES COMMISSION
ATTN: PURCHASING
P O BOX 1326
GREENWOOD SC 29648

OR

(Hand Delivery)

GLEAMNS HUMAN RESOURCES COMMISSION
ATTN: PURCHASING
237 N HOSPITAL ST
GREENWOOD SC 29646

INCLUDE 'P06-01-11' ON PROPOSAL PACKAGE IN ORDER FOR
PURCHASING TO EASILY SORT PROPOSALS AS THEY ARRIVE.
GLEAMNS HRC WILL NOT BE RESPONSIBLE FOR LOST OR DELAYED
MAIL.

FOR QUESTIONS TO THIS SOLICITATION, CONTACT CHARLES
VAUGHN @ cvaughn@gleamnshrc.org OR 864/229-8806.

Executive Offices

237 North Hospital Street, Greenwood, SC 29646 • PO Box 1326, Greenwood, SC 29648
(864) 223-8434 • Fax (864) 223-9456
www.gleamnshrc.org

GENERAL INFORMATION

GLEAMNS Human Resources Commission, heretofore known as Agency, invites you to submit a sealed proposal in accordance with the requirements of this solicitation as follows:

This request for proposals does not commit the Agency to award a contract, to pay any costs incurred in the preparation of the proposal, or to procure or contract for the activities, goods or services described. The Agency reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with qualified contractors, to vary the provisions of a request at any time prior to the execution of the contract, or to cancel in part or in whole this request, if it is in the best interest of the Agency.

Each Vendor will be required to submit three (3) references which would include a name, address, telephone number, mobile number, email address, and general description of similar agreements and services performed in the past two (2) years.

Proposals will not be reviewed if they are late or not responsive, i.e., not containing all requested specifications, costs and other information, and submitted in the manner prescribed.

The proposals will be reviewed solely on the material they contain. No modifications, additions, or substitutions to any proposals will be accepted from offertory after the closing date and time.

The Agency reserves the right to select such offer of which it deems appropriate and is not bound to accept any proposal based on price alone, further reserving the right to reject any or all proposals if it is deemed to be in the Agency's best interest.

Questions concerning the Request for Proposals will be accepted until the specified closing date/time and should be addressed as specified in this solicitation.

Small, minority, and women owned businesses are encouraged to submit proposals, with due consideration given to all offertory.

All offertory are to submit (1) one ORIGINAL proposal plus (3) copies.

The Agency may require selected offertory to participate in cost negotiations, technical revisions or other revisions to their proposals prior to contract finalization.

The offer, solicitation or acceptance of gratuities or compensation, intended to influence the contractor selection process is expressly prohibited.

The Agency reserves the right to disqualify (with reason) a vendor from the qualified contractors list.

All vendors will be notified as to the acceptance or rejection of their offer in writing.

The Agency reserves the right to seek appropriate administrative, contractual, or legal

remedies in instances in which vendors violate or breach contract terms.

Provisions for termination of the contract by the Agency or the recipient, and the basis of the settlement in cases of default, or because of circumstances beyond the control of the contractor shall be clearly defined.

EQUAL EMPLOYMENT OPPORTUNITY

All contractors awarded contracts exceeding \$100,000 must comply with Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor."

CLEAN AIR ACT (42 U.S.C. 7401 et seq.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 et seq.)

All contractors and subcontractors awarded contracts exceeding \$100,000 are required to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.). Violations shall be reported to the Federal awarding agency and the Region Office of the Environmental Protection Agency (EPA).

BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

For all contracts or sub-grants of \$100,000 or more, the Agency shall obtain from the contractor a certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer of employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

DEBARMENT AND SUSPENSION (E.O.S. 12549 AND 12689)

For all contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11), (\$100,000 in 2005) the Agency shall obtain from the contractor a certification that neither the contractor nor any of its principal employees are listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs.

DRUG-FREE WORK PLACE CERTIFICATION: By submitting a proposal, Vendor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-Free Workplace Act.

ETHICS ACT: By submitting an offer, you certify that you are in compliance with South Carolina Ethics, Government Accountability, and Reform Act of 1991, as amended.

OCCUPATIONAL HEALTH & SAFETY ACT: The successful contractor has the responsibility for the overall compliance with the OSHA regulation and code.

TAXES: 7% South Carolina sales tax shall be listed as a separate line item on proposal for all equipment and supplies/materials.

QUESTIONS FROM CONTRACTORS: Any prospective vendor desiring an explanation or interpretation of the solicitation must be in writing. Questions must be received five (5) days prior to deadline date/time. All questions should be directed to Charles Vaughn, Purchasing Manager @ cvaughn@gleamnshrc.org, faxed to 864/223-9456 or mailed to P O Box 1326, Greenwood SC 29648. Label any communication regarding your questions with the name of the Purchasing Manager, and the solicitation title and number. **ORAL EXPLANATIONS OR INSTRUCTIONS WILL NOT BE BINDING.** Any information given a prospective contractor concerning a solicitation will be furnished promptly to all other prospective contractors as an Amendment to the Solicitation.

AMENDMENT TO THE SOLICITATION: The solicitation may be amended at any time prior to opening. All vendors should check for amendments. It shall be the vendor's responsibility to insure that amendments have been received and acknowledged on the provided form:

- By signing and returning the amendment.
- By identifying the amendment number and date in the space provided.

IF THIS SOLITATION IS AMENDED, THEN ALL TERMS AND CONDITIONS WHICH ARE NOT MODIFIED REMAIN UNCHANGED.

BASED ON DISCUSSIONS MADE BETWEEN CONTRACTORS AND PURCHASING MANAGER DURING PROPOSER'S CONFERENCE ON WEDNESDAY, OCTOBER 26, 2011 AT 10:00AM, PURCHASING MANAGER WILL ISSUE AN AMENDMENT(S) WHICH MIGHT ALTER 'SCOPE OF WORK' LISTED BELOW.

AWARD NOTIFICATION: Notices of Intent to Award and Notices of Award will be sent to all vendors who submitted a proposal.

COMPLIANCE WITH LAWS: During the term of this contract, the awarded contractor and sub-contractors shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

CONTRACTOR PERSONNEL: The awarded contractor shall enforce strict discipline and good order among their employees and all subcontractors and other persons carrying out the contract.

REJECTION/CANCELLATION: The Agency may cancel this solicitation in whole or in part. A Notice of Cancellation will be posted to inform public of Agency's decision.

INCURRING COSTS: The Agency shall not be liable for any costs incurred by firms prior to the issuance of a contract.

INTRODUCTION

The Agency is a public non-profit human service agency chartered in February 1966. The purpose of this Corporation is to implement activities under the Economic Opportunity Act of 1964, PL 88-452, the Omnibus Budget Reconciliation Act of 1981 and subsequent related legislation to aid in improving education, economic opportunities, living environment and general welfare of the people living in Abbeville, Anderson, Edgefield, Fairfield, Greenwood, Laurens, Lexington, McCormick, Newberry, Oconee, Pickens, Richland and Saluda counties of South Carolina. The goal of this Corporation is the elimination of poverty by reducing the barriers which prevent low-income persons from improving themselves and to promote self-sufficiency through the development of programs funded by state and federal agencies.

INTRODUCTION – CSBG: The federal Omnibus Budget Reconciliation Act of 1981 created the Community Services Block Grant (CSBG) Program. It provides a range of services designed to assist low-income people to attain the skills, knowledge, and motivation necessary to achieve self-sufficiency. The federal grant program permits a wide range of local program activities to assist low-income participants in employment, education, better use of available income, housing, emergency assistance, nutrition, community involvement, and referral and income management. CSBG programs are provided through the state's Office of Economic Opportunity. The Office of Economic Opportunity has used these funds over the past several years to "Promote maximum participation by poor people in the elimination, causes and conditions of poverty". Funds have been used for General Emergency Assistance, Partnership and Counseling, Rural Emergency Housing Assistance, Community Food and Nutrition, LIHEAP Support Cooling and Heating and Direct Energy Assistance.

SCOPE OF WORK

Administrative offices of the CSBG Program are located in the building known as the Brewer Annex, located at 301 N Hospital St, Greenwood SC 29646. The current HVAC system at the Brewer Annex consists of (2) two natural gas heat exchangers and (2) two condensing units which separately provide heating and cooling to various areas of the building through ductwork. The current systems are old, do not operate efficiently and have worn parts that the Agency considers not feasible to repair or replace. Also, we believe there is a problem with ductwork in some areas of the building due to the velocity of air from the vents. The Agency prefers to replace these (2) two systems with individual electric PTAC (**P**ackaged **T**erminal **A**ir **C**onditioner) units. These units shall provide heating and cooling for each room and office for the entire building. The number and size of units installed in the building will be based on the square footage/load calculation of each room or office. The building consists of (7) seven offices, (1) kitchenette, (1) one conference room and (1) one large waiting room. If an electrical upgrade is needed to operate these units, the cost of upgrade shall be included in all proposals. The Agency prefers these units to be installed below the windows in each room or office, if possible. Therefore, construction services will be needed to open up spaces in the brick walls to accommodate these new units. If space below windows is not adequate in any

room or office, contractor shall propose the best possible area for that room or office. The units will be adequately spaced below the windows to allow for a window change out if the Agency receives a grant award to upgrade all windows to energy-efficient windows in the future. Awarded contractor shall be responsible for proper removal of all old equipment, removal of all construction debris and closing of return openings. The Agency prefers to contract with a general contractor who shall provide, and/or be responsible for, total construction services, including but not limited to, building construction, electrical and HVAC services, and all sub-contractor services deemed necessary.

QUALIFICATION/CERTIFICATION OF VENDORS

Contractor must be a general contractor with a valid general contractor's license. Contractor must submit a copy of license with proposal.

COMPENSATION

If project is awarded, at completion of services and repairs, Contractor will submit to the Agency a completed invoice and mail to: GLEAMNS HRC, Attn: Accounts Payable, P O Box 1326, Greenwood SC 29648. Invoices must include pertinent information of project, such as services provided, equipment installed and detailed costs. The work is not considered complete until the program director or designee has approved a final inspection of completed work. If all work is completed satisfactorily, invoices will be paid within fifteen (15) days of receipt of invoices. If work is not completed satisfactorily, the program director or designee will contact Purchasing Manager and Purchasing Manager will contact Contractor to negotiate corrective repairs and/or costs. The possibility of receiving progress payment invoices will be negotiated with awarded contractor.

WARRANTY OF CONSTRUCTION

GENERAL GUARANTY: The Vendor shall remedy at his/her own expense any defect due to faulty parts, supplies or workmanship and pay for any damage to other work resulting from the Vendor's failure to conform to the contract documents. The Vendor expressly guarantees and agrees to remedy any defects in the work and pay for any damages to other work resulting there.

CONTRACT ADMINISTRATOR

The contract administrator for this project shall be Charles Vaughn and can be contacted via email at cvaughn@gleamnshrc.org.

AWARD OF CONTRACT

THIS IS ONLY A REQUEST FOR PROPOSALS. THE OFFICE OF ECONOMIC OPPORTUNITY (OEO) MUST APPROVE THIS PROJECT BEFORE PROJECT IS AWARDED AND AN ACTUAL CONTRACT IS EXECUTED.

If project is accepted by OEO, award will be made to the successful contractor following an evaluation process. The Agency will award a contract to the most responsible and responsive vendor submitting an offer, for the best interest of the Agency. Said notice shall constitute acceptance of the successful vendor's proposal. The Agency will notify all vendors after awards for contract has been made. The Agency reserves the right to reject the proposal of any vendor where the available evidence or information does not satisfy the Agency that the vendor is qualified to carry out the terms of the contract.

CONTRACT PERIOD

Term of contract will be determined with awarded contractor, subject to availability of funding from OEO, all terms and conditions, except for any price redetermination as authorized elsewhere in this contract, remain unchanged.

RATES

Each contractor will submit with proposal a total cost for project, to include, but not limited to, construction services and fees, trip charges, equipment, supplies and permit(s).

PROPOSALS

A three-page Proposal Form (ATTACHMENT A) including request for three references who received vendor's similar services in the last two years, is attached to the end of this Request for Sealed Proposals and must be used as offer or Offeror can submit any other form as long as format is the same. The Agency reserves the right to issue supplementary information during the proposal preparation period. All proposals become the property of the Agency and will be kept confidential until after an award of the successful Offeror(s) is made. Thereafter, they will be kept on file for a period of 3 years. If the Offeror believes any portion of its proposal to be proprietary information, it must specify in its proposal the portions which are considered to be proprietary. All proposals are generally considered to establish contractor offers, not to be withdrawn for ninety (90) days after the date set for proposal acceptance. Once submitted, vendors may only change or withdraw proposals up to the day and time of proposal deadline.

LATE PROPOSALS

The Agency will not accept late proposals and will allow vendors to pick up any proposal, request for withdrawal or request for modification received after the time and date set for receipt of proposals.

EVALUATIONS

The selection procedure for this procurement requires the evaluation of the proposals be completed by at least a three-person evaluation committee. The committee will rate each proposal and through these ratings the Agency will recommend the contractor that has submitted a proposal most beneficial to the Agency in accordance with the criteria.

CRITERIA FOR TECHNICAL EVALUATION

Criteria to be used by the Agency for the technical evaluation of this specific procurement are listed below. Each evaluation will be reviewed and decisions made in a timely manner.

Evaluation Criteria

| <u>Percentage Points</u> | <u>Factors</u> |
|--------------------------|----------------|
|--------------------------|----------------|

| | |
|-----|--|
| 60% | Proposed services/Qualifications/Certification |
| 20% | References |
| 20% | Cost |

LABOR AND PROCUREMENT REQUIREMENTS

The Vendor and all subcontractors of the vendor shall comply with the labor laws of the State of South Carolina and all other laws, ordinances, and legal requirements affecting the work in Greenwood County.

CONTRACTOR'S LIABILITY INSURANCE

(1) Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect the contractor from the types of claims set forth below which may arise out of or result from the contractor's operations under the contract and for which the contractor may be legally liable, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting thereof; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification -- Third Party Claims.

(2) Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis: (i) Premises -- Operations, (ii) Independent Contractor's Protective, (iii) Products and Completed Operations, (iv) Personal and Advertising Injury, (v) Contractual, including specific provision for contractor's obligations under the provision entitled Indemnification --Third Party Claims, (vi) Broad Form Property Damage including Completed Operations, and (vii) Owned, Non-owned and Hired Motor Vehicles.

(3) The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater:

COMMERCIAL GENERAL LIABILITY:

- Liability insurance, minimum \$1,000,000 coverage
- Workers compensation, minimum \$500,000 coverage, or as required

(4) Required Documentation. (a) Prior to commencement of the work, Contractor shall provide to the Agency a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name every applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. (b) Prior to commencement of the work, Contractor shall provide to the Agency a written endorsement to the Contractor's general liability insurance policy that (i) names every applicable using governmental unit (as identified on the Cover Page) as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Agency as secondary and noncontributory. (c) Both the certificate and the endorsement must be received directly from either the Contractor's insurance agent or the insurance company.

(5) Contractor shall provide a minimum of thirty (30) days written notice to every applicable using governmental unit of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers.

(6) The Agency's failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of Contractor's obligations to obtain the required insurance.

THE AGENCY'S RIGHTS AND LIABILITIES

The Agency reserves and holds the following rights and options which may be exercised at its sole discretion:

- To accept or reject any proposal which in its judgment is for the best interest of the Agency, and all contractors are notified that such acceptance or rejection shall be without liability on the part of the Agency for any action brought by any contractor because of such acceptance or rejection, nor shall the contractors seek any recourse of any kind against the Agency because of such acceptance or rejection. The submittal of a Proposal in response to this notice shall constitute an agreement of the Contractor to these conditions.

- To select and enter into agreement with the contractor which, at the Agency's sole discretion, best satisfy the requirements, goals and objectives of the Agency.
- To terminate or resume the procurement process by written notice to the contractors for any reason whatsoever.
- To reject or set aside for subsequent reactivation any and all proposals by written notice to such contractors for any reason whatsoever.
- To supplement, amend, or otherwise modify the scope of services at any time before receipt of proposals.
- To execute the agreement with the most responsible and responsive contractor as evidenced by the content of the proposal and any clarifications and changes made thereto during the procurement process that meets the requirements and evaluation criteria as set forth.
- The lowest cost to the Agency in its proposal.
- To seek and receive clarifications of any changes to any proposal at any time.
- To enter preliminary or final negotiations at any time with any contractor individually or simultaneously with one or more other contractors.
- To conduct any clarification or negotiation process with any contractor.
- To set or modify any deadline for the completion of any clarification or negotiation phase of the procurement process.
- To reduce or expand at any time the list of contractors with which the Agency is actively engaged in any clarification or negotiation process, based on the evaluation factors set forth as applied to the state of development of each proposal as revised to such date.

Furthermore, each Contractor, by submitting its proposal, agrees to hold the Agency harmless and free from all liability, loss, injury, and/or cost and expense **which might be** incurred by such Contractor in responding or as a consequence of its response and agrees to waive any and all claims for damages arising in connection with the procurement process contemplated by the Agency.

EMPLOYMENT OF ALIENS

All contractors, as a condition to doing business with the Agency, are required to comply with all applicable laws and regulations relating to the employment of aliens. If it is determined that a contractor fails to comply with any such employment laws or regulations during the course of any Agency projects, such failure may constitute material breach of the contractor's contractual relationship with the Agency and the Agency may take all reasonable steps to terminate its relationship with the contractor.

NONDISCRIMINATION

During the performance of this contract, the Contractor agrees as follows:

- The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, sexual orientation, age, creed, color, national origin or disability.

- The Contractor will also take affirmative action to ensure that applicants are recruited and employed, and that employees are treated during employment without regard to their race, religion, sex, sexual orientation, age, creed, color, national origin or disability.
- The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth provisions of this non-discrimination clause.
- The Contractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, sexual orientation, age, creed, color, national origin or disability.
- The Contractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- The Contractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable state employment goals as amended and supplemented from time to time in accordance with a binding determination of the applicable county employment goals.
- The Contractor agrees to provide written notice to all recruitment agencies, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, physical disability, marital status or sex, and that it will discontinue the use of any recruitment agency that engages in direct or indirect discriminatory practices.
- The Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to race, religion, sex, sexual orientation, age, creed, color, national origin or disability, and conforms with the applicable employment goals, consistent with the statutes and court decisions of the State of South Carolina federal law and applicable federal court decisions.

THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act applies to the Agency, its programs, services, activities and facilities.

GLEAMNS HUMAN RESOURCES COMMISSION

REQUEST FOR SEALED PROPOSALS

**CONSTRUCTION SERVICES FOR HVAC UPGRADE FOR COMMUNITY
SERVICE BLOCK GRANT (CSBG) PROGRAM AT BREWER ANNEX**

SOLICITATION NUMBER: P06-01-11

PROPOSAL SUBMISSION FORM

Name of Business _____

Owner/Operator _____

Address _____

Business Contact Person _____

Telephone No. _____

Mobile No. _____

Fax No. _____

Email Address _____

Years in Business _____

Proposed Services/Qualifications *(Use additional sheets if necessary)* _____

Certification and Training *(Include certificated copies)* _____

**PROPOSAL SUBMISSION FORM
CONT'D**

REFERENCES

Name _____ Contact No. _____

Address _____

Email Address _____

Description of Services Provided _____

Name _____ Contact No. _____

Address _____

Email Address _____

Description of Services Provided _____

Name _____ Contact No. _____

Address _____

Email Address _____

Description of Services Provided _____

**PROPOSAL SUBMISSION FORM
CONT'D**

TOTAL COST FOR SERVICES - \$ _____

AMENDMENTS RECEIVED

Amendment No. Signature

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Signature of Representative Submitting Proposal

Date

Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)

This fact sheet provides general information concerning DBRA.

Coverage

DBRA requires payment of prevailing wages on federally funded or assisted construction projects. The Davis-Bacon Act applies to each federal government or District of Columbia contract in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are Davis-Bacon "related Acts." The "related Acts" include provisions that require Davis-Bacon labor standards apply to most federally assisted construction. Examples of "related Acts" include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

Basic Provisions/Requirements

Contractors and subcontractors must pay laborers and mechanics employed directly upon the site of the work at least the locally prevailing wages (including fringe benefits), listed in the Davis-Bacon wage determination in the contract, for the work performed. Davis-Bacon labor standards clauses must be included in covered contracts.

The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination. The contractor's obligation to pay at least the prevailing wage listed in the contract wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid on all hours worked on the site of the work.

Apprentices or trainees may be employed at less than the rates listed in the contract wage determination only when they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department.

Contractors and subcontractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency. They are also required to post the applicable Davis-Bacon wage determination with the Davis-Bacon poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by the workers.

Davis-Bacon Wage Determinations

Davis-Bacon wage determinations are published on the Wage Determinations On Line (WDOL) website for contracting agencies to incorporate them into covered contracts. The "prevailing wages" are determined based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area. Guidance on determining the type of construction is provided in All Agency Memoranda Nos. 130 and 131.

Penalties/Sanctions and Appeals

Contract payments may be withheld in sufficient amounts to satisfy liabilities for underpayment of wages and for liquidated damages for overtime violations under the Contract Work Hours and Safety Standards Act (CWHSSA). In addition, violations of the Davis-Bacon contract clauses may be grounds for contract termination, contractor liability for any resulting costs to the government and debarment from future contracts for a period up to three years.

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge (ALJ). Interested parties may appeal ALJ decisions to the Department's Administrative Review Board. Final Board determinations on violations and debarment may be appealed to and are enforceable through the federal courts.

Typical Problems

(1) Misclassification of laborers and mechanics. (2) Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours). (3) Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day. (4) Failure of to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices. (5) Failure to submit certified payrolls weekly. (6) Failure to post the Davis-Bacon poster and applicable wage determination.

Relation to State, Local, and Other Federal Laws

The Copeland "Anti-Kickback" Act prohibits contractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment, and requires contractors to submit a weekly statement of the wages paid to each employee performing DBRA covered work.

Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wage and overtime pay requirements under State (and local) laws. Also, overtime work pay requirements under CWHSSA) and the Fair Labor Standards Act may apply.

Under Reorganization Plan No. 14 of 1950, (5 U.S.C.A. Appendix), the federal contracting or assistance-administering agencies have day-to-day responsibility for administration and enforcement of the Davis-Bacon labor standards provisions and, in order to promote consistent and effective enforcement, the Department of Labor has regulatory and oversight authority, including the authority to investigate compliance.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

INSTRUCTIONS FOR COMPLETING PAYROLL FORM, WH-347

Department of Labor, Wage and Hour Division

General: The use of the WH-347 payroll form is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

This form meets needs resulting from the amendment of Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay not less than fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance on the rear of the payroll that he is paying to other fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Column 1 - Name, Address, and Social Security number of Employee: The employee's full name and Social Security Number must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless the address changes.

Column 2 - Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by employees. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown or hours so worked is maintained and shown on submitted payroll by use of separate entries.

Column 4 - Hours worked: On all contracts subject to the Contract Work Hours Standard Act enter as overtime hours worked in excess of 8 hours per day and 40 hours a week.

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay, including Fringe Benefits: In straight time box, list actual hourly rate paid the employee for straight time worked plus in cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. In overtime box shown overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of

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1962. In addition to paying no less than the predetermined rate for the classification which the employee works, the contractor shall pay to approved plans, funds or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See "FRINGE BENEFITS" below.

FRINGE BENEFITS - Contractors who pay all required fringe benefits: A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in section 4(c).

Contractors who pay no fringe benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on Federal or Federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of the employees' weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/\$120.00.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction should be involved, use first 4 columns; show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage, but indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory

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 Unlisted classifications needed for work not included within
 the scope of the
 classifications listed may be added after award only as
 provided in the labor
 standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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 In the listing above, the "SU" designation means that rates
 listed under the
 identifier do not reflect collectively bargained wage and
 fringe benefit
 rates. Other designations indicate unions whose rates have
 been determined
 to be prevailing.

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 WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can
 be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on
 a wage
 determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests
 for summaries
 of surveys, should be with the Wage and Hour Regional Office
 for the area in
 which the survey was conducted because those Regional Offices
 have
 responsibility for the Davis-Bacon survey program. If the
 response from this
 initial contact is not satisfactory, then the process described
 in 2.) and
 3.) should be followed.

With regard to any other matter not yet ripe for the formal
 process
 described here, initial contact should be with the Branch of
 Construction
 Wage Determinations. Write to:

Branch of Construction Wage Determinations
 Wage and Hour Division
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an

interested party
(those affected by the action) can request review and
reconsideration from
the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR
Part 7).
Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the
interested
party's position and by any information (wage payment data,
project
description, area practice material, etc.) that the requestor
considers
relevant to the issue.

3.) If the decision of the Administrator is not favorable, an
interested
party may appeal directly to the Administrative Review Board
(formerly the
Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION