



Department of Energy

Washington, DC 20585

February 10, 2011

To: Smart Grid Investment Grant Recipients

From: Donna Cook Williams, Contracting Officer
for Smart Grid Investment Grants

Subject: Davis Bacon Act Applicability to Smart Grid Investment Grant (SGIG)
Program Grants

Dear Smart Grid Investment Grant Recipient:

In July 2010, the International Brotherhood of Electrical Workers (IBEW) appealed to the Department of Labor (DOL) the decision by the Department of Energy (DOE) that the Davis-Bacon Act (DBA) was not applicable to the installation of "smart meters" and monitoring equipment. DOL has issued its opinion that the normal installation of such meters is not subject to DBA.

During the review of that appeal, DOL took the opportunity to provide additional guidance to DOE. Attached to this letter are two Frequently Asked Questions (FAQs) explaining the additional guidance. As you will see consistent with our January 12, 2010 FAQ, work performed in-house with the utility's own workforce continues to not be subject to DBA; however, where the utility contracts out construction work that is the subject of the SGIG Program grant, the work is subject to DBA.

The DOE Contracting Officer will be amending SGIG Program grants as necessary to include the applicable wage determinations that were current as of the time the grant agreement was signed. DOE plans to provide a Webinar regarding the application of the two new FAQs and DBA compliance in March 2011. Additionally, DOE will work one-on-one with the utilities to assist where compliance is an issue.

DOE expects that DBA compliance will not be an issue for most SGIG recipients. For example, if a utility has contracted out no construction work, then the utility has no concern with DBA compliance at this time. If the utility has performed all work in-house or plans to do all work in-house, the utility has no concern with DBA compliance. If the utility has contracted out construction work and the work was performed under collectively bargained agreements, it is presumed that the wages paid were prevailing. In those cases, the utility need only provide an affirmative statement to the DOE Contracting Officer that the work was performed under collectively bargained agreements. Going forward, the utility will collect the certified payroll records from its contractors. Where, however, the utility contracted out construction work and the contractors did not pay the prevailing wage, as set forth on the

appropriate wage determination, DOE will work individually with the utility to fix the DBA compliance issues and may seek variances or waivers of retroactivity in particular cases. DOL has assured DOE that it will not require submission of retroactive payroll records. Contractors will be required to provide certified payroll records going forward. However, DOE also understands that it will take some time for it to modify the agreements, and for each utility to incorporate the DBA clauses and wage determinations into its contracts for construction.

DOE understands that many utilities will have questions, but we ask that you please look at your individual situation to determine whether the work you have completed is subject to DBA and to what extent the work you have planned is actually subject to DBA. Once you have a good idea of your situation, please contact your Technical Project Officer or me at Donna.Williams@hq.doe.gov. You may also collect your questions and raise them at the Webinar in March.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna C. Williams", is written over the typed name.

Donna C. Williams
Contracting Officer
Office of Headquarters Procurement Services