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PROGRAM GUIDANCE

PROGRAM: Recovery Act Indian Housing Block Grant and Indian Community Development Block Grant Programs

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities

FROM: For  Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Applicability of Buy American and Davis-Bacon Requirements to Recovery Act Programs

Purpose: The purpose of this guidance is to provide tribes and tribally designated housing entities with revised information regarding the applicability of certain provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Buy American: Section 1605 of the Recovery Act requires that “[n]one of the funds appropriated or otherwise made available by [the Recovery Act] may be used for a project unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States.”

The Office of Management and Budget in its April 23, 2009, interim guidance on the Recovery Act determined that only public buildings or public works of a “governmental entity” would be subject to the requirements of Section 1605. On June 16, 2009, a determination was made that eligible recipients under both the Indian Community Development Block Grant (ICDBG) and the Indian Housing Block Grant (IHBG) or Native American Housing Block Grant (NAHBG) programs would not be subject to this provision, since these entities are not covered under the definition of a governmental entity in OMB’s interim guidance.

Therefore, none of the projects assisted with Recovery Act ICDBG, IHBG, or NAHBG funds (both formula and competitive grants) must comply with the Buy American provisions of the Recovery Act.

Davis-Bacon Requirements: Section 1606 of the Recovery Act requires all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Recovery Act to be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (Davis-Bacon wages).

Congress recently modified these provisions and the President signed the Supplemental Appropriations Act for FY 2009 on June 24, 2009. Section 1205 of the Act (P. L. 111-32) requires applicants for ICDBG and IHBG funds to comply with the requirements of those programs rather than with Section 1606 of the Recovery Act.

Therefore, no projects assisted with Recovery Act ICDBG funds must comply with Davis-Bacon wage rates. In the IHBG formula program and NAHBG competitive program, the provisions of Section 104(b) of the Native American Housing Assistance and Self-Determination Act (NAHASDA), and 24 CFR 1000.16(b) govern the use of Recovery Act IHBG/NAHBG formula and competitive funds. In accordance with Section 104(b)(1) of NAHASDA, Davis-Bacon applies to projects assisted with IHBG/NAHBG funds. Also, 104(b)(3) provides for tribes to develop tribally determined wage rates for IHBG/NAHBG projects.

Please contact your Area Office of Native American Programs if you have any questions.