

BRICKS IN THE WALL

Building Toward a More Cost-Effective and Efficient Construction Project

Stimulus Act Projects Require Strict Adherence to Rules

The country is now well into the multi-year implementation of the American Recovery and Reinvestment Act of 2009 (ARRA or Stimulus Act). While commentators and politicians may still debate the effects of the Stimulus Act on the economy, contractors are seeing first hand some of the very real consequences of the Act. You may recall our admonitions about understanding and complying with the applicable laws triggered by working on ARRA projects. In particular, we provided you a detailed summary of the Fair Labor Standards Act, and prevailing wage laws, and we offered an overview of what ARRA requires of the construction industry. (See 2009 issues of *Bricks in the Wall* at www.bakerdonelson.com/bricks-in-the-wall.)

Last week, the Department of Labor (DOL) announced that it has taken significant legal action against a construction company in New York for failing to abide by the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act, both of which specifically are made applicable by working on federal government projects involving Stimulus Act funds. See the DOL's press release at <http://www.dol.gov/opa/media/press/whd/WHD20110312.htm>

The DOL has charged that Lettire Construction Corporation did not properly monitor at least 16 out of 23 of its subcontractors to ensure their compliance with prevailing wage and overtime requirements. The DOL's investigation noted "under-bidding" by at least one subcontractor and that Lettire did not post required wage decisions at the worksite for employees to view. The DOL found that about 290 employees of these subcontractors were owed a total of around \$1.4 million in back wages. The investigation also determined that Lettire failed to pay prevailing wage rates and fringe benefits to some employees, did not pay some employees for all of the hours they worked, and submitted certified payrolls that did not reflect all actual hours worked by some employees during part of the project.

As a result of these violations, the DOL is asking to have Lettire and its president debarred for a period of three years from bidding or working on any federally funded projects. Ultimately, not only must Lettire come up with nearly \$1.5 million in back wages, but it also faces what, unquestionably, is a shot to its business plan and may amount to a death sentence.

If you have not had an opportunity to acquaint yourself with what ARRA requires, please do so. We have been involved in other examples of DOL investigations into similar allegations concerning Stimulus Act projects. While not every infraction will result in the same punishment the DOL imposed on Lettire, you cannot afford to take that chance.



Cameron S. Hill, shareholder in the Chattanooga office, concentrates his practice in commercial litigation, construction law, employment law and ERISA litigation. From 1995 until 1997, he served as law clerk to Judge

Curtis L. Collier, United States District Court for the Eastern District of Tennessee. Mr. Hill co-authored the Tennessee chapter on Mechanics' and Materialmen's Lien Law for lienlawonline.com, and is a frequent presenter/CLE instructor on construction issues. He is a member of the East Tennessee Chapter of the National Electrical Contractors Association and the Association of General Contractors of East Tennessee. Go to <http://www.bakerdonelson.com/cameron-hill/> for more information.

Phone 423.209.4160
chill@bakerdonelson.com

continued

Bricks in the Wall is a bimonthly publication series, each issue on a topic of interest to the construction industry. Listed at right are previous issues and their topics.

- **Giving Proper Notice**
- **Get a Change Order**
- **Don't Just Kick a Contractor Off the Project**
- **Changes to Tennessee Lien Law Statute**
- **Your Contractor Delayed Completion of the Project – What Next?**
- **Is Your Liquidated Damages Clause Valid?**
- **E-Verify Required for All Federal Contractors – Part of the Plan**
- **Changes to Tennessee Lien Law Statute Effective July 1, 2008**
- **It Pays to be Indemnified**
- **Federal Government Contractors Must Use E-Verify Effective January 15, 2009**
- **You Need to Understand the Fair Labor Standards Act; Part 1 – The Basics**
- **You Need to Understand the Fair Labor Standards Act; Part 2 – What is “Work” Under the FLSA?**
- **You Need to Understand the Fair Labor Standards Act; Part 3 – Are You a Joint Employer?**
- **You Need to Understand the Fair Labor Standards Act; Part 4 – Enforcing the FLSA**
- **You Need to Understand the Fair Labor Standards Act; Part 5 – Protect Yourself**
- **Here Comes OSHA – Protect Yourself**

The Rules of Professional Conduct of the various states where our offices are located require the following language: THIS IS AN ADVERTISEMENT. Ben Adams, CEO and Chairman of the Firm, maintains an office at 165 Madison Avenue, Suite 2000, Memphis, Tennessee 38103, 901.526.2000. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST. Receipt of this communication does not signify and will not establish an attorney-client relationship between you and Baker Donelson unless and until a shareholder in Baker Donelson expressly and explicitly agrees IN WRITING that the firm will undertake an attorney-client relationship with you. In addition, electronic communication from you does not establish an attorney client relationship with the firm. ©2011 Baker, Donelson, Bearman, Caldwell & Berkowitz, PC