

Chapter 9: Labor Standards

Introduction

Construction projects funded with CDBG require that certain procedures be followed in order to comply fully with applicable federal and state requirements. For example, federal and state labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment of workers on construction projects.

This chapter describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, compliance with labor standards, pre-construction meetings and inspection and approval procedures.

Section 9.1 Pre-Bidding Requirements

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification - usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Please refer to [Chapter 4: Procurement](#) for more guidance on bidding.

Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in Connecticut. Water and sewer projects also require the approval of various state agencies. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage determinations (see Section 5 of this chapter).

Note: The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to [Chapter 2: Environmental Review](#) for more information.

Property Acquisition issues

At this stage of the process, the grantee must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. All property to be acquired for any activity, funded in whole or in part with CDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies for Federal and Federally Assisted Programs (42 U.S. Code Chapter 61), also referred to as the Uniform Act or URA. Included in the definition of property, among other things, are rights-of-way and easements. If the construction project involves real property acquisition, the grantee should contact DOH to ensure acquisition is done according to the provisions of the Uniform Act. See [Chapter 5: Acquisition](#) for additional information.

Section 9.2 Determining the Applicability of Labor Provisions

Federal Requirements

Most construction projects including alteration, repair or demolition, funded in whole or in part with federal dollars, must comply with federal labor standards provisions. Applicable laws include the following:

- The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction work that is financed in whole or in part with CDBG funds of more than \$2,000.
- The Copeland Anti-Kickback Act requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.
- The Contract Work Hours and Safety Standards Act requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all CDBG-assisted construction contracts of \$100,000 or more.

[Davis Bacon and Related Acts](#)

[Copeland Anti-Kickback Act](#)

[Contract Work Hours and
Safety Standards Act](#)

Tip: HUD had published two guides that are available for downloading on labor standards requirements. These documents are "Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies" and "Making Davis Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements.

[Making Davis Bacon Work
and
HUD Handbook 1344.1](#)

Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation of residential structures containing less than eight units.
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, and certain pieces of equipment that would not become permanently affixed to the real property.
- Separate and distinct projects. In some cases, an activity can occur in the same vicinity as another activity, but because it is a separate and distinct project, labor provisions may apply to one and not the other. Contact DOH for guidance.

- Contracts solely for demolition, when no construction is anticipated on the site.

DOH should be contacted if there is any situation where Davis-Bacon applicability is in question.

Section 9.3 State Prevailing Wage Requirements

State Prevailing wage requires the payment of state prevailing wage, set by Connecticut General Statute, on each contract for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project by the State or its agents, or by any political subdivision of the State. The law is applicable when the total cost of all work to be performed by all contractors and subcontractors in connection with new construction of a public works project is \$1,000,000.00 or more. **It is applicable to remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project \$100,000.00 or more.**

Public works projects are construction projects financed by the government for the benefit or use of the general public. Under current law, the state or political subdivision must award the contract and be a party to the contract and not be a mere grantor of funds for the project to be covered.

Therefore, any CDBG construction contract entered into between a contractor and the State, and/or Municipality, and/or Housing Authority for a project that will benefit the general public, where federal Davis-Bacon wages are not applicable, is covered by the State prevailing wage laws regardless of where the funding for the project has been derived. Example: A Municipality enters into a contract for street repair, and is financing the project with its own funds. This project is subject to State prevailing wages.

For additional information regarding the State prevailing wage law and rates contact the State Department of Labor's Wage and Workplace Standards Division at (860) 263-6000. State Prevailing Wage rates can also be requested through their web site: <http://www.ctdol.state.ct.us/wgwkstnd/prevailwage.htm>.

[Connecticut Department
of Labor Wage and
Workplace Standards](http://www.ctdol.state.ct.us/wgwkstnd/prevailwage.htm)

State's July 1 Update

As part of the State Prevailing wage conditions, Connecticut State law requires an update for wages every year as of July 1. That is, if the contract includes State public works provisions, then the contractor must update his wages every year on July 1 (the Town must ensure compliance). The contractor must determine if updates to wages are required and to pay the new wages to the effected workers. Therefore, every contract between the Town and the General Contractor should have language in it to make these changes applicable to the construction work proposed.

Section 9.4 Bidding and Contracting Requirements

A grantee or the grant administrator must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in [Chapter 4: Procurement](#)). The grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Once it is determined that a construction project is subject to federal and/or state labor standards provisions, the following steps must be taken to ensure compliance.

Step 1: Download Applicable Federal Wage Rate Decision

The grantee should access the federal wage rate decisions through the Internet at <https://sam.gov/content/wage-determinations>.

When accessing a wage decision for the first time, Grantees should click the Public Building or Works box.

Wage Determinations

Legacy Website
WDOL

A wage determination (WD) is a set of wages, fringe benefits, and work rules that the U.S. Department of Labor has ruled to be prevailing for a given labor category in a given locality.

Help me find a wage determination

I know the WD number
Search by WD Number

e.g. DBA or SCA Identifier

Show active only

I do not know the number
Start your search by selecting a category

Public Building or Works
Wage rates for laborers and mechanics

Service Contracts
Wage rates for service employees
Service Contract Act (SCA)

Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. Most CDBG construction projects will involve either Building or Heavy determinations. In determining which type of wage determination to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

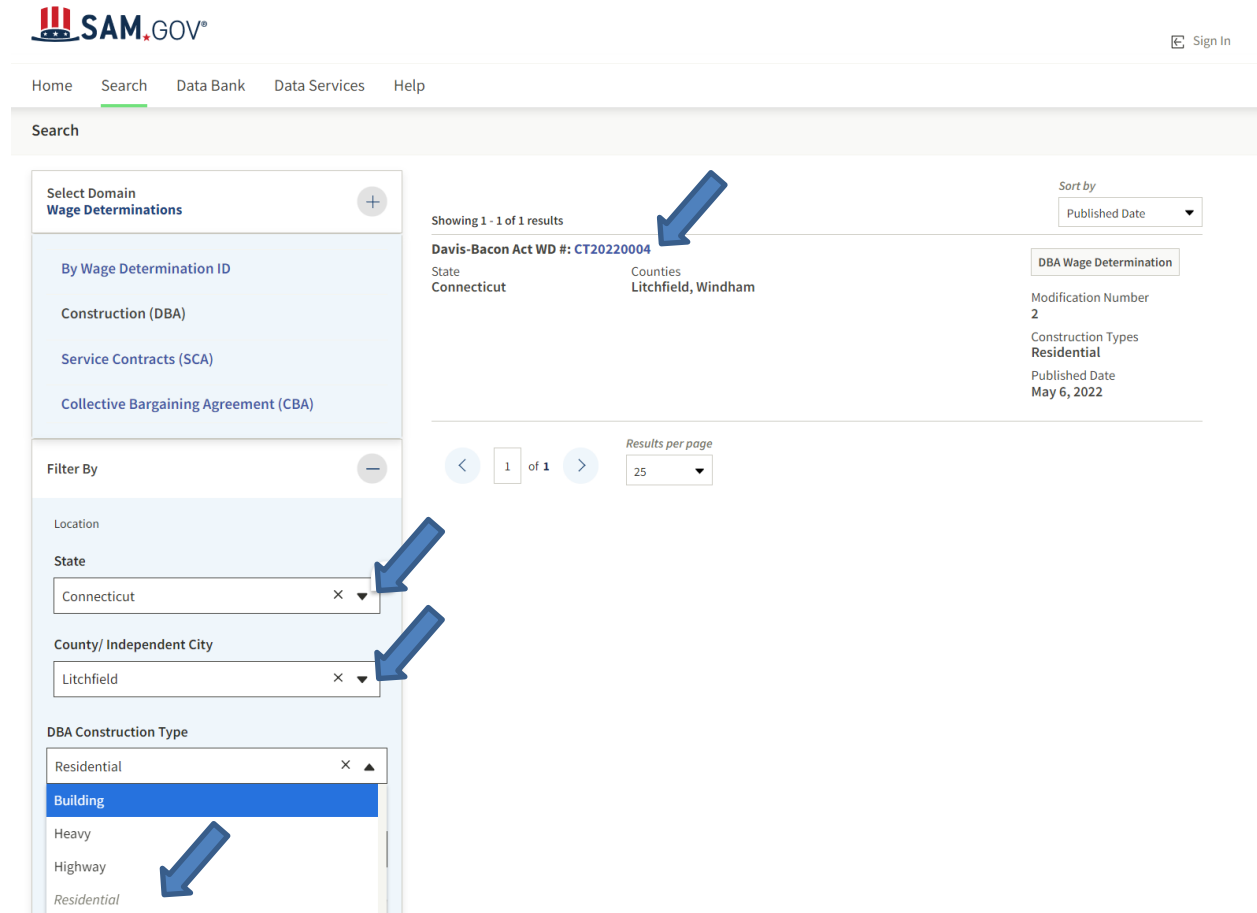
Building construction generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.

Residential projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.

Highway projects include construction, alteration or repair of roads.

Heavy construction is generally considered for all construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

Next, choose Connecticut and the county of the project and the construction type. The current applicable wage decision will appear. Click the Davis-Bacon Act WD # to download the wage decision.



A DOH Program Manager should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary, including those instances where the Grantee is required to request a wage determination from the Department of Labor.

Step 2: Add Federal Construction Contract Provisions to the Bid Package

The wage rate decision must be a physical part of the bid package. The bid package must contain the labor standards requirements, which are summarized below and separately in this Chapter as Attachment 9-1.

- Davis-Bacon provisions;
- Contract Work Hours and Safety Standards clause;
- Copeland Anti-Kickback clause;
- Employment of Apprentices/Trainee clause; and S Applicable wage rate determination(s).

[Attachment 9-1:
Federal Labor Standards
Provisions \(HUD 4010\)](#)

Caution: If the grantee fails to include the correct wage rate determination(s), the grantee will be responsible for paying the difference between the proper wage rate and the wages paid by the contractor based upon the information provided in the bid package.

Step 3: Procurement Requirements

Once the bid document is prepared, it is time to advertise for construction bids. Refer to [Chapter 4: Procurement](#) for specific instructions on how to proceed with the bidding process.

Step 4: Wage Determination Lock-in Notice

Because the DOL continually monitors the economic conditions of the construction contracting profession, the wage rates are subject to change. It is essential that the Labor Standards Officer verify that the most current rates are being utilized. The Davis-Bacon Wage Determination that is in effect on the day of bid opening is the wage decision that must be used for all construction related activities on the federally funded project. Therefore, the following actions must be taken:

1. The Labor Standards Officer must obtain the wage decision in effect on the day of bid opening and provide it to the project Architect or Engineer to be forwarded to all prospective bidders,
2. If it can be justified that there was not a 'reasonable time' available before bid opening to notify bidders of the modification, the previous wage decision may be assigned to the project with a written report of the justification submitted with the Wage Determination Lock-In Notice. DOH defines a 'reasonable time' as a minimum of 72 hours prior to bid opening,
3. The Labor Standards Officer must complete the Wage Determination Lock-In Notice and submit to DOH's Labor Standards Specialist for reporting to the Department of Labor, and
4. Wage Decisions are only effective for 90 calendar days after the bid opening. On the 91st day the previously issued determination expires. If the contract is not awarded within 90 calendar days of the bid opening, the wage decision that is in effect on the date that the construction contract is signed is the decision that will be utilized for the entire project. The Labor Standards Officer must notify the contractor and Engineer or Architect of the new wage decision that is applicable to the project and submit a new Wage Determination Lock-In Notice to DOH.

[Attachment 9-2: Wage Determination Notification](#)

Section 9.5 Pre-Construction Requirements

Pre-construction Conferences

Before any work is performed by a contractor, DOH requires that the grantee, the grant administrator, the engineer or architect, and any other technical advisors to the grantee conduct a preconstruction conference with the contractor to explain contractual requirements and performance schedules. Though no longer required in order to comply with federal labor standards, this conference reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the contractor and the grantee.

The grantee should prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. (See Attachment 9-3: Outline of a Pre-construction Conference.) A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. The grantee should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

[Attachment 9-3:
Outline of a
Pre-Construction
Conference](#)

Items that should be covered at the pre-construction conference include, but are not limited to:

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
- Obtain the contractor's Federal Identification Number and their Unique Entity Identification (UEI) number from the System for Award Management (SAM). See [Chapter 4: Procurement](#) for more information about the UEI.
- Have the contractor complete Attachment 9-4: Wage/Fringe Benefit Certification, listing each anticipated job classification and salary/wage rate anticipated to work on the project. The contractor should also provide a current employee roster, listing all persons currently employed. This roster can then be used to determine Section 3 Worker status and new job opportunities.
- Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact DOH immediately.
- Explain that employee interviews will be conducted during the project.
- Emphasize that both a copy of the wage rate decision and the wage rate poster must be posted at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the state certification of his/her program.
- If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law. If state wage rates apply to the contract, explain that workers must also be paid overtime if they work more than eight hours in a day or 40 hours in a week, unless signed agreements have been obtained from each employee.

[Attachment 9-4:
Wage/Benefit Certification
Form](#)

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- Indicate that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) makes the contractor liable for not only restitution but also liquidated damages of \$10 per day for every day each worker that exceeded 40 hours a week without being paid time and a half.
 - Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kickback" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.
 - Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.
 - Provide the contractor with a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects."

[Attachment 9-5: Contractor's Guide to Prevailing Wage Requirements](#)
 - Provide contractor with posters for the site, such as "Davis Bacon Act," "Notice to All Employees Working on Federal or Federally Financed Construction Projects," "Safety and Health Protection on the Job," and "Equal Employment Opportunity is the Law." These posters are referenced in the text box to the right. Inform the contractor that it is his/her responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions.

[Attachment 9-6: Required Contracting Posters](#)
Also available online at
[DOL Workplace Posters](#)
 - Provide handouts explaining everything covered and obtain the contractor's signature to document receipt.
 - The grantee should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

Following the pre-construction conference, the grantee must prepare and maintain a pre-construction conference report. This report is meant to record the minutes of the meeting. A sample Pre-construction Report Format is provided as Attachment 9-7.

[Attachment 9-7: Pre-Construction Report Format](#)

Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, issue a Notice to Proceed to each prime contractor to begin performance of the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The Notice to Proceed must include the name of the contractor and the amount of the contract. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents. A sample Notice to Proceed is provided as Attachment 9-8. **The Notice to Proceed must also be sent to DOH following execution.**

[Attachment 9-8:
Sample Notice to Proceed](#)

Section 9.6 Certified Payroll Requirements

Once construction is underway, the general contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations.

Certified Payroll Reports

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance) and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. See Attachment 9-9: Payroll Falsification Indicators, for HUD guidance on detecting falsification through frequent payroll review and interview comparison.

[Attachment 9-9:
Payroll Falsification
Indicators](#)

Certified payroll reports must be submitted by the contractor to the grantee within seven to eleven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided as Attachment 9-10. Note that an employee's full social security number and address are not to be included on these certified payroll reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. And a Statement of Compliance must accompany each payroll submission.

[Attachment 9-10: Payroll
Form/Statement of
Compliance
\(WH 347\)](#)

Payroll reports must be reviewed by the grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the grantee to indicate that they have been reviewed.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance (part of the payroll form in [Attachment 9-10](#)) has been completed and signed by the owner or an officer of the firm.

[HUD Handbook 1344](#)

Any discrepancies and/or falsification indicators must be reported to DOH, along with the steps being taken by the grantee to resolve the discrepancies. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Grantees are required to submit a Section 5.7 Report (provided as Attachment 9-11 including instructions) whenever an employer is found to have underpaid its employees by \$1,000 or more. Grantees should contact their DOH Program Advisor for assistance if a violation occurs.

[Attachment 9-11:
Section 5.7 Enforcement
Report and Instructions](#)

The contractor and subcontractor(s) must number and date each CPR. The first week in which work is performed, the CPR must be marked 'Initial' and the last payroll report must be marked 'Final'. Contractor(s) and subcontractor(s) are required to submit a CPR for each consecutive week from the Initial Report to the Final Report. 'No work' CPRs must be submitted whenever there is a temporary break in the work on the project. If a contractor completes a portion of the work identified in his contract and is required to be off the job site for a period of time while project construction continues to the point where he can complete the remainder of the work identified in his contract, this contractor may submit a written statement to the Grant Administrator, signed by the owner or officer of the company that no work will be performed on the job site from Month, Day, and Year to Month, Day and Year. When this statement is received, the contractor is not required to submit weekly CPRs until their work on the project resumes.

Caution: Owner-operators of power equipment, like self-employed mechanics, may not submit their own payrolls certifying to the payment of their own wages **BUT** must instead be included on the responsible contractor's certified payroll report.

Fringe Benefits

Fringe Benefits listed on the applicable wage determination must be paid to the employee or for the employee for every hour worked on the federally assisted project. Those benefits may be provided to the employee in the form of a fringe benefit package or the cash equivalent of the fringe benefits due may be

added to the amount of the base wage with the total amount due reflected in the hourly rate column on the Certified Payroll Report.

Paragraph (a) or (b) on the Statement of Compliance must be marked on every certified payroll report to indicate the method by which fringe benefits will be paid. If the fringe benefits are being paid to a bona fide fringe benefit plan, the Grant Administrator must obtain verification from the contractors or subcontractors of the calculation of benefits paid and proof of payment. Bona fide fringe benefit plans are identified at 29 CFR4.171. Examples include but are not limited to:

1. **Health, life or other similar insurance premiums paid by the employer** Documentation includes:
 - a. Most recent insurance statement with a breakdown of each covered employee's premium, and
 - b. A signed letter by an officer of the company that states how much of the premium they cover (percentage or dollar amount).
2. **Pension or retirement contributions recognized by the Internal Revenue Service (IRS) and contributed by the employer** Documentation includes
 - a. Letter from Pension Provider stating which employees participate in the program,
 - b. Signed letter by an officer of the company that states what percentage of contributions they match, or if it is automatically given to the employee even if they do not contribute, and
 - c. Monthly statements throughout the project that show how much the employee contributed and how much the employer contributed.
3. **Holiday and/or vacation pay contributed by the employer** Documentation includes:
 - a. Copy of Employee Handbook that states the number of paid vacation and holidays provided to employees and
 - b. Copy of employer's calculations for the amount of fringe benefit credit claimed for vacation and holiday pay listed by employee.
4. **Union Fringe Benefit Packages** Documentation includes:
 - a. Copy of the Union Benefits Breakdown provided by each specific Union to the contractor, and
 - b. Monthly statement listing covered employees and verifying payment to the plan.

Fringe benefits do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or Workmen's Compensation. The Grant Administrator must verify that the base rate + fringe benefit amount paid to each employee is equal to or greater than the amount stated in the wage determination assigned to the project. To determine the hourly amount of fringe benefits being paid by the contractor for the employee, the annual amount paid must be divided by 2080 hours.

Section 9.7 Construction Management Requirements

General

During construction, the grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this Chapter. In addition to payroll reviews and interviews, the grantee is responsible for ensuring proper construction management. This role may be fulfilled by the architect/engineer and, if so, should be included in the scope of services for that professional services contract. Construction management must include on-site inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications, as well as quantity and quality control.

Note that written inspection reports must accompany any contractor's request for partial payment. It is also strongly recommended that monthly progress meetings be held to allow the grantee, engineer, grant administrator, and funding agencies to review the status of the project, resolve problems, and review requests for payment.

Labor Standards Requirements

Construction management requirements include conducting job site interviews with workers using Attachment 9-12: Record of Employee Interview Form.

[Attachment 9-12:
Record of Employee
Interview Form](#)

The grantee must conduct interviews using the representative sampling technique and the interviews should include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance. At least 20 percent of the workers on-site, and at least one in each job classification working at the site, should be interviewed.

The grantee should ensure the following actions are performed:

- DOH recommends that interviews be conducted at least once during the course of each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage determination, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.
- A fully completed and signed Record of Employee Interview form is maintained in the contract file.

Interview Protocols

The following guidelines should be observed by persons conducting job site interviews:

- The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process).
- The interviewer should see that the wage determination and other required posters are properly displayed.
- The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and sub-contractors should be interviewed. Administrators may choose to complete the Project Wage Rate Sheet found in Attachment 9-13.

[Attachment 9-13
Project Wage Rate Sheet](#)

This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.

To initiate the interview, the authorized person shall:

- Properly identify himself/herself;
- Clearly state the purpose of interview; and
- Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.

When conducting employee interviews, the interviewer should pay particular attention to:

- The employee's full name.
- The employee's permanent mailing address.
- The last date the employee worked on that project and number of hours worked on that day.
- The interviewer should make it clear that these questions relate solely to work on the project and not other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage determination.

The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay. If it appears the individual may be underpaid, the interviewer should closely question the worker:

- Ask for any records.
- Arrange to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observe duties and tools used:
 - Enter any comments necessary.
 - Enter date interview took place.

The payroll examiner must compare information on the Record of Employee Interview form with the certified payroll submission: If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form. If discrepancies do appear, appropriate action should be initiated. When necessary, action has been completed, the results must be noted on the interview form.

Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a certified payroll report.

Notification to the Prime Contractor

The contract administrator will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the recipient may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing Wage Restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage determination for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

Correction Payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or payrolls for a specified beginning date through a specified ending date). The correction payroll will list:

- Each employee to whom restitution is due and their work classification,
- The total number of work hours,
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.

A properly signed Statement of Compliance must be attached to the correction certified payroll. Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment.

Review of Corrected Certified Payroll

The contractor administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

The contractor is required to provide the employee with a Documentation of Restitution Employee Release Form (Attachment 9-14) to verify that the employee is in agreement with the amount of restitution and relinquishes all claims of underpayment.

[Attachment 9-14:
Documentation of Restitution
Employee Release Form](#)

Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. The grantee must continue to attempt to locate the unfound employee(s) for three years after completion of the project. After three years, any amount remaining in the account must be credited and/or forwarded to DOH.

Section 9.8 Enforcement Report

The U.S. Department of Labor Regulations require all federal agencies to submit a report to the Secretary of Labor regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of \$1,000 or where there is reason to believe that the violations were willful.

[Attachment 9-11:
Instructions and Section 5.7
Enforcement Report](#)

The instructions for filling out the form and the form itself can be found in Attachment 9-11.

Liquidated Damages for Overtime Violations

As mentioned previously, failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act (more than 40 hours per week) makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half. Grantees should contact their DOH Program Advisor for assistance if a violation occurs.

Semi-Annual Labor Standards Enforcement Reports

DOH must submit Semi-Annual Labor Standards Enforcement Reports to the Department of Labor (DOL) twice a year. Grantees will submit the necessary information on all contracts, funded in whole or in part with CDBG dollars, subject to Davis-Bacon and related acts awarded each reporting period on the Semi-Annual Grantee Performance Report.

Equal Opportunity Requirements

The grantee must also visit the construction site to ensure the project site is posted with the required Equal Employment Opportunity is the Law poster (provided in Attachment 9-6). These visits can be done in conjunction with employee interviews for labor standards compliance. The results of each visit should be noted in the Equal Opportunity Compliance file.

[Attachment 9-6:
Required Contracting Posters](#)

In addition, the grantee should interview each contractor during the course of work to determine compliance with the Standard CDBG-assisted Equal Employment Opportunity Construction Contract Specifications contained in the contract.

Equal Opportunity Compliance Files

Equal opportunity compliance files must be maintained for each contractor on the project. At project completion, each equal opportunity compliance file should contain the following items:

- Verification of contractor/subcontractor eligibility concerning Section 3 and equal opportunity, (or cross reference the contract file that includes fully executed certifications).
- Contractor eligibility, cross-referenced from Labor Standards Compliance file.
- Correspondence concerning contractor equal opportunity compliance.
- Site visit reports indicating equal opportunity posting on site and contractor compliance with equal opportunity provisions, cross-referenced from Labor Standards Compliance file.
- Equal opportunity problems uncovered in employee interviews and evidence of resolution.
- Evidence of interview with contractor concerning equal opportunity compliance.

Section 9.9 Review and Payments

Progress Payments

Upon agreement as to quantities of work completed, a contractor may submit requests for partial or progress payments. Written inspection reports must accompany the contractor's requests for partial payment. Inspection reports, copies of field measurement notes, and test results used to verify contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of certificates for partial payment and necessary documentation, the grantee must check equal opportunity and labor standards compliance files to ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and any discrepancies resolved; and
- Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

Retainage from Progress Payments

Although retainage is not a requirement, many grantees have found it helpful to maintain 5 percent retainage from partial payments until after final inspection, in case of any unresolved problems. See below for information on how retainage is addressed in the Final Payment.

Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders are permissible where the cumulative cost of all such orders does not exceed 15 percent of the original contract price and these changes do not constitute a major alteration of the original scope of work. If the proposed change orders will cumulatively exceed 15 percent of the original contract, the grantee must contact DOH for prior approval.

Each change order must be accompanied by a supporting statement that describes why the change is necessary, cost estimates, and any needed plans and specifications. The grantee must approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum and cannot be issued after final payment.

Final Payment

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The grantee or the architect/engineer should make the final inspection and prepare a written report of the inspection prior to the issuance of a final certificate of payment. Before making final payment (less 5 percent retainage), the grantee must ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and discrepancies have been resolved;
- Any underpayments of wages and/or liquidated damages have been appropriately handled and documented;
- All discrepancies identified through job site interviews have been resolved;
- All other required equal opportunity and labor standards provisions have been satisfied;
- All contract submissions have been received;
- All claims and disputes involving the contractor have been resolved;
- All files are complete; and
- As-built plans have been filed.

If the inspection is satisfactory, the grantee can then issue acceptance of work and final payment, less a 5 percent retainage.

Retainage from Final Payment

Within 30 days from the filing of the acceptance of the work and upon submission of a clear lien certificate by the contractor, the grantee should release the 5 percent retainage that has been withheld from each progress and final payment to the contractor (at the grantee's option).

If any claims or liens remain after the 30-day period, the grantee must take appropriate action for disposition of the retainage and all claims against the bonds in accordance with state law.

Section 9.10 Other Resources

CDBG Small Cities Davis Bacon Workshop



HUD Regional Office 2020 Davis Bacon Presentation



HUD Office of Davis Bacon and Labor Standards

https://www.hud.gov/program_offices/davis_bacon_and_labor_standards

HUDEXchange Davis Bacon and Labor Standards

<https://www.hudexchange.info/programs/davis-bacon-and-labor-standards/>