

CHAPTER V: CONSTRUCTION MANAGEMENT & LABOR STANDARDS

OVERVIEW

Historically the Community Development Block Grant (CDBG) program has been a capital improvements program. Therefore, a majority of projects undertaken with CDBG funds involve construction. Ensuring compliance with the construction contracting requirements is one of the more complex and time-consuming elements of CDBG grant administration. The **Construction Checklist** at the end of this chapter details the activities required for compliance. Utilizing the Checklist can help with tracking the process from start to finish.

Construction contracting has four distinct phases:

- 1) Pre-Bid & Bid Process Phase
- 2) Contract Award & Pre-Construction Phase
- 3) Construction & Monitoring Phase
- 4) Project & Grant Closeout Phase

Each phase has a set of requirements and is discussed separately in this chapter.

FEDERAL & STATE LAWS

The rules and regulations governing the activities of Community Development programs are broken down into three categories: the **Laws** as enacted by Congress, the **Regulations** created by HUD to achieve the result prescribed by the Laws, and the **Policy Memoranda** that address specific instances and questions.

The regulations created by the Office of the Assistant Secretary of Community Planning and Development that pertain to Community Development programs are contained within **24 CFR Part 570 - Community Development Block Grants**.

Construction work financed in whole or in part with Community Development Block Grant (CDBG) funds must adhere to federal and state laws applicable to public works projects. The following list includes laws that are in effect from start to finish for construction projects. Please be advised that the list is as complete as possible. Note that it is important for the grantee to keep informed regarding new federal and state laws as well as changes in existing laws.

This chapter is designed to supplement the resources already provided by the U.S. Department of Housing and Urban Development (HUD) and the Department of Labor (DOL).

FEDERAL LAWS

Recipients of federal funds shall follow all applicable laws, rules and regulations concerning the payment of wages, contract work hours, safety, health standards, and equal opportunity for CDBG programs, including but not limited to the rules set forth in 24 CFR, 570.603 – Labor Standards and the following, as they may be applicable to CDBG projects:

“Common Rule” or Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (24 CFR Part 85): Requires that all

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procurement, regardless of dollar amount, be conducted so as to provide “Maximum open and free competition”; prohibits the soliciting or acceptance of gratuities or favors from contractors or potential contractors.

Davis-Bacon Act (40 U.S.C. 276 a – 276 a-5): Among other provisions, this act requires that prevailing local wage levels be paid to laborers and mechanics employed on certain construction work. Prevailing wages are computed by the U.S. Department of Labor and are issued in the form of federal wage decisions for each classification of work. The Davis-Bacon Act (DBA) provides that contracts in excess of \$2,000 funded in whole or in part with federal funds for the construction, alternation, and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provision with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions. This act requires weekly payment of prevailing wage rates, is “site-based” as defined in 29 CFR 5.2 (j), and usually applied through the “Related Acts.” Residential rehabilitation contracts involving single structures designed for less than eight (8) units are exempt.

Davis Bacon Related Acts (DBRA)

Section 110 of Title I of the Housing and Community Development Act of 1974, as amended, includes other applicable laws covering Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act, and the Copeland Act. By so certifying, the State of Nevada assures that methods of administration at the State level as well as those of recipients will be adequate to meet the requirements of labor standards statutes and implementing regulations (24 CFR 570.496 Remedies for Non-Compliance; Opportunity for Hearing). Most of the Related Acts are listed in 29 CFR. § 5.1(a) (Purpose and Scope). These laws include by reference the requirements for payment of prevailing wages determined in accordance with the DBA. The following Davis Bacon Related Acts (DBRA) statutes are used:

- 1) Contract Work Hours and Safety Standards Act** (40 U.S.C. 327 – 333, 1962). Under this act (CWHSSA), among other provisions, laborers and mechanics employed by contractors and subcontractors on construction work assisted with CDBG funds must receive overtime compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty (40) hours in any workweek, plus the straight-time of any fringe benefits, on a Davis-Bacon (DB) covered project. Violators shall be liable for the unpaid wages and in addition for liquidated damages computed in respect to each laborer or mechanic employed in violation of the act.
- 2) Federal Anti-Kickback laws/Copeland Act** (18 U.S.C. 874 and 40 U.S.C. 276, 1934). Among other things, this law outlaws and prescribes criminal penalties for "kickbacks" of wages in federally financed or assisted construction activities. Weekly statements of compliance and certified weekly payrolls must be provided by all contractors and subcontractors.
- 3) Fair Labor Standards Act** (29 U.S.C. 201 et seq.), requiring among other things that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.

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4) **Housing and Community Development Act** of 1974 (HCDA). When Congress passed the Housing and Community Development (HCD) Act of 1974, it broke down the barriers of prevailing practice, where under separate categorical programs the Federal Government had made the decisions about every community development project undertaken by cities. The HCD Act departed from this model by creating the CDBG program. CDBG merged seven (7) categorical programs into a block of flexible community development funds distributed each year by a formula that considers population and measures of distress including poverty, age of housing, housing overcrowding, and growth lag. Grantees now determine what activities they will fund as long as certain requirements are met, including that each activity is eligible and will meet one of the three broad national objectives of the program.

Miller Act and FAR Requirements (40 U.S.C. 270a-270f): Provides that all federal construction contracts performed in the United States must require the contractor to furnish a performance bond in an amount satisfactory to the contracting officer; a payment bond in a penal sum of up to \$2.5 million, and other surety bonds as well. In the Federal Acquisition Streamlining Act of 1994, Congress made the Miller Act inapplicable to contracts under \$100,000, and directed agencies to develop alternatives to surety bonds for contracts between \$25,000 and \$100,000. These statutory requirements are implemented in FAR part 28, bonds and insurance.

FAR part 28: prescribes requirements for obtaining financial protection against damages under sealed bid and negotiated contracts. It covers bid guarantees, bonds, sureties, and insurance.

Other laws, such as the National Housing Act of 1934 (12 U.S.C. 1715), Housing Act of 1950 (12 U.S.C. 1749), Federal Aid to Highways Acts (23 U.S.C. 113), Federal Water Pollution Control Act (33 U.S.C. 1372), U.S. Housing Act of 1937, as amended (42 U.S.C. 1437), and 29 CFR Part 1 - Procedures for Predetermination of Wage Rates. This list is not inclusive.

HUD Certifications and Supplemental General Contract Provisions: Seven (7) Certifications and Assurances and nine (9) Supplemental Provisions/Conditions that must be included in CDBG bid documents are included at the end of the chapter. There are separate forms used for contractors and subcontractors; not all forms apply to all projects.

STATE LAWS

Local Government Purchasing Act (Nevada Revised Statutes, Chapter 332): specifies the requirements placed on local governments when purchasing materials or requesting bids.

Public Works Projects (Nevada Revised Statutes, Chapter 338.013 – 338.095 & NRS 338.1385): provides requirements for local governments regarding wages, employment practices and bid requirements when advertising for and entering into contracts; provides requirements for entering contracts when no responsible bids are received. Requires that for every contract in which a public body of the state is a party, wages paid to each class of mechanic and worker cannot be less than the rate of such wages prevailing in the county, city, town or district where the public work is located. The State rates apply to projects that total \$250,000 and over.

Contractors' Bonds on Public Works (Nevada Revised Statutes, Chapter 339): provides requirements for bonds when entering into contracts.

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Compensation, Wages and Hours (NRS Chapter 608 NRS 608.005 – 608.330) requires certain safeguards as to hours of service, working conditions and compensation.

PROJECT PHASES

1. Pre-Bid & Bid Process Phase
2. Contract Award & Pre-Construction Phase
3. Construction & Monitoring Phase
4. Project & Grant Closeout Phase

Requirements for labor standards compliance vary with each phase of the project. During the **Pre-Bid & Bid Process Phase**, the development of the solicitation document is of major concern. During the **Contract Award & Pre-Construction Phase**, the grantee must ensure that a proper contract award procedure is followed and that the contractor is aware of all labor requirements. In the **Construction & Monitoring Phase**, the grantee is required to monitor the contractor's performance. The **Project & Grant Closeout Phase** is critical to ensure all documentation is in place and all reports have been submitted so the grant can be closed.

PHASE I: PRE-BID & BID PROCESS

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It is necessary to develop a bid document that contains the technical specifications, federal and state requirements, wage rates, and other information. Therefore, the Pre-Bid & Bid Process Phase begins with selecting engineering and/or architectural services to prepare and/or complete the final project plans for the bid package, if this has not yet been completed. It is essential to clearly define the scope of work and responsibilities so the bid document indicates what is expected of the contractor.

1. Selecting Engineering and/or Architectural Services:

For selecting an engineer or architect to prepare the final project plans that include drawings and material specifications, the CDBG Grantee is instructed to follow the instructions in the chapter on Procurement Standards. Those instructions include compliance with NRS 332.115 1. (b) that exempts professionals, such as architects, engineers, and surveyors from price bidding in response to Requests for Qualifications. A Request for Qualifications (RFQ) process is used for procuring the services of architects, engineers, and surveyors when the estimated cost is more than \$35,000 (NRS 625.530). Compensation for these professional services is to be negotiated after the firm is selected but before the contract/agreement is signed. Refer to Chapter IV: Procurement for additional information on that process.

Upon tentatively selecting an architect or engineer, the Grantee must contact the CDBG Program Specialist to determine whether the individual or firm is eligible to receive federal and/or state funds. This must be done before a contract is awarded.

2. Preparing the Bid Document:

Once final project plans are complete, the Grantee can begin preparing the bid document. Generally, there are three parts to a construction bid document:

- 1) **Technical Specifications:** This is the part of the contract that describes or depicts in detail what will be built. These provisions are unique to the project.
- 2) **General Provisions:** These are the terms and conditions that form the basis of the agreement between the owner of the project and the contractor. These are fairly standard contract provisions. General Provisions can come from a number of sources. Professional societies such as the American Institute of Architects (AIA) or American Society of Civil Engineers (ASCE) have developed boilerplate documents that the architect or engineer can access. The County/City legal counsel can also develop bid and contract documents.
- 3) **Supplemental General Provisions:** These are documents that are specifically required by the funding agency. The governing regulations on labor standards require that specific language be included in all solicitations for bids and contracts for projects receiving federal financial assistance. All of the **CDBG Certifications & Assurances and Supplemental General Provisions/Conditions, including the Federal (Davis-Bacon) Prevailing Wage tables, Federal Labor Standards Provision (HUD-4010), and the State Prevailing Wage tables (if applicable)** must be **physically contained** within the bid documents.

Except for the Davis-Bacon and/or State Prevailing Wage Determinations required for a specific project, all of these necessary documents are contained at the end of Chapter IV: Procurement.

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- 4) **SAM.gov:** All contractors and subcontractor must be active in SAM.gov. Updating must be done annually. This is not optional. Failure to be current in SAM.gov can delay implementation of a project. If work has been done and contractors or subs are not registered and active, it can result in loss of payment for work done.

Other items that may be included in the bid packet include, but are not limited to:

- 1) Description of the method of bidding, the process by which the bids will be evaluated, and the method of contract award;
- 2) Bid schedule;
- 3) Notice of award form;
- 4) Notice to proceed form;
- 5) Change order form;
- 6) Any required conditions of other funding agencies;
- 7) Any required conditions of the local government.

NOTE: Under federal law, the Nevada Preferential Bidding law (AB 144) **CANNOT** be applied to public construction contracts funded with CDBG funds. **Do not include such a clause in the bid documents.**

Before inviting bids on any contract, ensure the bid package contains all the relevant information that bidders need to respond. A **Bid Package Checklist** is included at the end of the chapter.

3. Construction Types:

Wage determinations are based on the type of construction being done. Rates are established by a survey of contractors, by geographic area, and may be modified from time to time for the four types of construction: **Building, Highway, Heavy, and Residential**. Within each type of construction, workers should be classified and paid for the work performed, not according to the level of skill, experience, or job title.

Building: This wage decision generally includes sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. It includes all construction of such structures within and including the exterior walls, the installation of utilities and equipment, both above and below grade level, as well as incidental grading, utilities, and paving. This category includes apartment buildings greater than four (4) stories and commercial buildings.

Highway: Includes projects involving the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas and other similar projects not incidental to building or heavy construction.

Heavy: Includes projects which cannot be classified as building, residential, or highway. Some heavy projects include heavy dredging, while others include water & sewer lines, parks and playgrounds, and flood control. Water and sewer line construction will typically be categorized as heavy construction.

Residential: Involves the construction, alteration, or repair of single family homes, townhomes, or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. For single family houses and townhouses projects,

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HUD has established the following criteria as a test to determine when “related” units become a covered “property” governed by DBRA.

1. The property includes eight (8) or more units;
2. The property initially will be commonly operated (meaning dwellings are to be rehabilitated as part of the CDBG project activities);
3. The property initially will be commonly owned.
4. The property for the most part is located on the same lot or on contiguous lots or parcels.

4. Wage Determination:

Obtaining the Wage Rate Determination(s) is critical in the development of the bid documents. For projects over \$2,000 but less than \$250,000, only the Davis Bacon (federal) wage rates are applicable. For projects totaling \$250,000 or more, state wage rates also must be included in the bid document. If the combined cost of the contracts is over \$250,000, the Grantee also needs to consider the state rates. The Grantee cannot break a project into contracts of less than \$250,000 to avoid the state rates.

Correct wage decisions are obtained by e-mailing the **Request for Wage Decision** form to the CDBG Program Specialist prior to bid advertisement. The request should be submitted as close to the bid advertisement date as possible. The CDBG Program Specialist will respond, via email, with the wage decision(s) along with federal labor provisions to be in the bid document and any additional instructions, if applicable. **These determinations must be included in bid documents and the construction contract.** Grantees must be sure to obtain the correct wage rate determination for each labor category based on project location, construction type, and date.

Department of Labor regulations at 29 CFR Part 1 establish the procedures for predetermining the wage rates required to be included in bid specifications/contracts for construction projects to which the Davis-Bacon and Related Acts apply. The Federal Acquisition Regulations also discuss the application of proper wage determinations in 48 CFR Subpart 22.4 - “Labor Standards for Contracts Involving Construction.” The Davis-Bacon wage decision that applies to a project, which **must be posted at the job site in a highly visible location**, contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work. They identify work classifications, basic hourly wages, fringe benefits, and must be posted in an area at the job site that is accessible to all workers.

Per 29 CFR 1.6, the wage decision is applicable to the project for only 180 days from the date of issuance. If a project wage decision is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and contract award, the grantee should obtain a new wage determination sufficiently in advance of the bid opening.

5. Job Classifications:

All laborers and mechanics need to be paid no less than the Davis-Bacon prevailing wage rate or State Prevailing wage rate, if applicable, for the work performed on the site, regardless of contractual relationship. Laborers and mechanics include anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, sheet metal workers, etc.). The Office of Labor Relations letter LR-96-01 describes labor standards compliance requirements for self-employed

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laborers and mechanics (also referred to as "working subcontractors"), business owners working with their crew, owner-operators of power equipment, and truck drivers.

Important Notes:

- Foremen or supervisors who regularly spend more than 20 percent of their time performing construction work are covered as "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.
- Self-employed laborers/mechanics cannot self-certify their weekly payrolls.
- Owners of businesses working with their crew on the same HUD-assisted job site may certify to the payment of their prevailing wages in conjunction with the prevailing wages paid to their employees (on the same weekly payroll).
- For any piece-work employees, the employer must compute an effective hourly rate for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.
- Area practice determines the allowable duties of helpers or laborers, but they may not be used as an informal apprentice or trainee or use the tools of the trade in assisting a journey worker (a licensed/certified/trained craftsman).

6. Additional Classifications:

Wage decisions may not include every classification needed to complete a project. The best strategy is to review the wage decision early and discuss it with the prime contractor at the earliest date possible. The prime contractor can determine which additional classifications are needed and submit requests to the CDBG staff after the contract has been awarded but before the pre-construction conference. Additional classification requests should only be for work not represented on the wage decision(s). If it is found that a class of laborer or mechanic not listed in the wage determination(s) is to be employed on the project, an effort can be made to match the laborer or mechanic to a classification already existing on the decision. If the laborer or mechanic cannot be conformed, the grantee must complete and submit, in writing, a **Request for Authorization of Additional Classification and Rate** (SF-4230 A, with a copy of the wage decision(s) originally obtained for the project.

Where the federal form says to submit to HUD, **grantees must submit the request to the CDBG office.** This report should identify the classification needed, a wage rate recommendation, and include supporting documentation, such as a copy of statements from both the contractor and the employee agreeing to the proposed wage rate. Requests that fail to meet CDBG/HUD approval are forwarded to the Department of Labor (DOL) for final determination. This process can take 30-45 days or longer.

7. Review of Wage Decisions:

CDBG projects governed by Davis-Bacon and Related Acts require closer oversight of contractors who

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may be unfamiliar with the requirements of the Act. It is the grantee's responsibility to provide whatever technical assistance may be needed by such contractors.

Upon receipt of the wage rate determination, the grantee and project engineer should review it to determine if any other classifications are required. If they are, a request for the additional classifications is submitted to the CDBG Program Specialist. While it is feasible additional classifications may be added after a project has started, the bid documents should be as complete as possible for job classifications.

Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved (i.e. not CDBG-funded portions alone) so long as all contracts awarded are closely related in purpose, time and place (i.e. viewed as an aggregate project). For example, demolition or site work preparatory to building construction is considered a part of the **building** project for wage determination purposes (because the end result is a building). Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project.

However, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work that is a part of a building project would not generally be separately classified.

Where construction is "incidental" in function, 20 percent of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project. Please note that very large projects may warrant a second wage decision even though activities do not specifically amount to 20 percent of the total project cost. Multiple wage decisions must be utilized in the contract specifications and closely monitored for payroll compliance.

8. Choice Limiting Actions: Prior to Advertising the Bid

In April 2011, HUD's Office of Environment and Energy (OEE) reaffirmed that it is HUD policy to not allow bids for choice-limiting actions (such as construction, demolition, etc.) before the environmental review process is complete. HUD indicated that their policy (24 CFR Part 50.3; 24 CFR 58.22; 40 CFR 1506.1; Federal Register Number 68, Volume 118, page 56121) is consistent with National Environmental Policy Act (NEPA) regulations at 40 CFR 1501.2 that requires agencies to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

The environmental review process must be completed before bidding in order to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

Please also be advised that the environmental review process is not complete and no choice-limiting actions may occur until approval by the State of Nevada of the grantee's successful completion of an Environmental Review and/or a Request for Release of Funds and Environmental Certification per 24 CFR 58.22.

No actions can be taken on a project until an environmental review is completed and a Notice to

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Proceed has been issued by the CDBG office. Please review the chapter on Environmental Review for further guidance.

8. Obtaining CDBG Review & Approval:

Prior to advertising the bid, assemble the complete bid package for review by the Grantee's attorney for completeness and consistency with state and federal laws and regulations. If applicable, send the bid package to any other state or federal agencies for review and approval.

After the bid document has been reviewed internally by the Grantee's attorney, a copy of the draft bid document is sent to the CDBG Program Administrator for review. Documents are reviewed for completeness and inclusion of all required CDBG documents. The documents are signed off on by the CDBG Program Administrator prior to advertising. To ensure project timelines are maintained, send a copy of the bid documents to the CDBG Program Administrator, **no later than 14 business days prior to the bid advertisement.**

9. Advertising a Bid Solicitation:

An advertisement of the bid should be drafted based on the information included in the "Advertisement for Bid" portion of the bid document. The bid advertisement must be in accordance with the Public Works Projects Act (NRS Chapter 338) or the Local Government Purchasing Act (NRS Chapter 332) and the Common Rule (24 CFR, Part 85). An effort must be made to involve minority and women owned businesses and Section 3 businesses and residents in contracting opportunities generated by CDBG funds.

Disadvantaged Business Enterprise (DBE) requirements of federal Executive Order 11246 are applicable to CDBG-funded construction contracts. Procedures for compliance discussed in Chapter X: Civil Rights, Equal Opportunity & Fair Housing should be followed and documented in the bid solicitation process.

The current Nevada Department of Transportation (NDOT) Disadvantaged Business Enterprise (DBE) Directory may be used to locate qualified DBE firms in your area. The DBE/WBE Directories can be accessed at:

www.nevadadot.com/NevadaDBE/DBE_Program.aspx

or

contact NDOT's DBE Program at:

(775) 888-7000 or TTY: 1-855-878-NDOT [6368]

Fax: 775-888-7115

or (WBE)

<http://www.mwbe.com/dir/directory.htm>

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The bid solicitation also can be submitted to plan room services, such as Dodge/McGraw Hill, plan exchanges, and contractor associations. The more exposure the bid solicitation receives, the more qualified contractors will be aware of it, hopefully resulting in lower and better bid proposals.

Any amendments to the bid package must be mailed as an addendum to each bidder. Every bidder must be given an appropriate period of time to review and respond.

A pre-bid conference and project walk-through is optional. If included, the place and location of the pre-bid conference should be included in the advertisement for bids.

10. Obtaining the Ten-Day Wage Check:

Ten (10) days prior to bid opening, the grantee must verify that the wage decision issued has not changed. Grantees must submit a **Request for 10-Day Wage Check** to the CDBG Program Specialist to verify the wage decision(s) included in the bid document is current. The Program Specialist will respond with confirmation of “No Changes” or with new Wage Determinations and any Modifications. If the wage decision has been modified, grantees should notify all potential bidders appropriately in conformance with procurement procedures. Grantees must file a copy of the response and any supporting documentation in the grantee’s Contract file.

This ten (10) day rule is guidance from the HUD Office of Labor Relations (OLR) to allow appropriate notification to the bidders should a wage decision be updated. The grantee must document verification of the wage decision, along with attempts to notify bidders of the reason they were unable to notify bidders.

If a wage decision has been obtained, and if a contract has not been awarded within ninety (90) days of bid opening, or if construction has not begun within ninety (90) days of contract award, the recipient must check with the CDBG Program Specialist to determine if the wage decision is still prevailing and if modifications have been issued. Grantees must maintain documentation that this was done. Table I provides a timeline for various actions.

Table I: Timeframe for Grantee Wage Decisions

TIMEFRAME	ACTION REQUIRED & DOCUMENTATION
No <i>earlier</i> than 5 days before the bid advertising date:	Obtain wages decision(s) from CDBG Program Specialist
10 Days BEFORE the <u>bid opening date</u> :	Request a 10-day wage check to determine if any modifications have been issued for the wage rate determination(s).
90 Days AFTER <u>bid opening date</u>	If no contract awarded, obtain a current wage determination to ensure use of the correct wages and any modifications issued for the wage rate determination(s)
90 Days AFTER <u>contract award date</u>	If construction has not begun, request a current wage determination to ensure use of the correct wage determination and any modifications for the wage rate determination(s)
180 Days AFTER <u>date of wage decision issuance</u>	If bidding has not yet been opened, complete another wage decision request.

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If the recipient fails to include the wage decision, or for any reason the wrong wage decision is included in the contract, the applicable wage decision reflecting the proper rates must be incorporated into the contract and be retroactive to the beginning of the construction.

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PHASE II: CONTRACT AWARD & PRE-CONSTRUCTION

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Generally, the contract is awarded to the lowest responsive and responsible bidder. A responsive and responsible bidder is one who bids on the contract as presented without deleting or adding any items. Some contracts are flexible and have additional optional items that a bidder is free to bid on or not. A responsible bidder is one that can demonstrate the ability to complete the contract within the time set out in the contract.

1. Lock-In Date:

For competitive bidding contracts, the lock-in date for wages is the date of bid opening, provided that a contract is awarded in 90 days. For negotiated contracts, the lock-in date is at contract award date or the construction start date, whichever occurs first. For all contracts, the contracting agency must have a system in place to order, manage, and track wage decisions, and to make sure the appropriate and current prevailing wage decision is incorporated into each Davis-Bacon covered contract.

2. Log Each Bid Received:

Upon receipt, each bid should be logged as to time and date of receipt. The bids should remain sealed and safely stored until the bid opening.

3. Conduct Bid Opening:

Public construction contracts must be awarded fairly and in a manner that ensures public funds are used as efficiently as possible. These objectives may be accomplished only if all bidders are required to respond to the same project specifications.

The bid opening should be conducted in a businesslike manner with each bid being opened and reviewed prior to reading aloud the dollar amounts. The city/county attorney should participate in the bid opening.

IRREGULARITIES: If any irregularities are found, the amounts should not be read or considered and the bid should be returned to the bidder. Should a bidder identify an error in the bids, in any form, the city/county attorney should review the State of Nevada's statute 408.343, [Bids and bidders: Procedure for award of contract governing bid irregularities] before proceeding further. When all matters of bid irregularities are resolved, the lowest responsive and responsible bid will be determined.

Examples of IRREGULARITIES CALLING FOR A POTENTIAL REJECTION OF A BID include:

- a contractor submitting a bid is not registered;
- bid proposals not submitted on specified forms, or altered in form by a bidder;
- bid proposals not submitted on time;
- unsigned bid proposals;
- bid proposals not accompanied by the specified guarantee (bid bond, etc.);
- bid proposals by unqualified or improperly licensed entities, contrary to specifications or law;
- qualifying a bid or bid items in a bid proposal contrary to the specified requirements of bid items or bidding documents;
- bid proposals which omit items required by the specifications;

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- altering a bid as to specified time of commencement or completion of work; and
- bid proposals that fail to acknowledge an addendum to the original call for bids.

Examples of MINOR BID IRREGULARITIES THAT MAY BE WAIVED include:

- omission of date signed or title of person signing;
- failure to initial erasures (assuming other information is legible);
- failure to acknowledge an addendum which does not affect quantity, quality, time or price;
- submission of a bid in an unsealed envelope;
- omission of a subcontractor's or supplier's name at bid submission time;
- unit price bid proposals which include correctable, reconcilable arithmetic errors if the unit price does not change; and
- lump sum bid proposals that include correctable, reconcilable arithmetic errors if the amount on which the award will be based does not change.

IF ALL BIDS RECEIVED EXCEED THE AMOUNT OF FUNDS AVAILABLE for the construction project, the CDBG Grantee has two options:

- 1) Use additional local financing resources;
- 2) Modify the bid package and repeat the entire bid process as outlined above.

Under no circumstances can CDBG Grantees negotiate with the low bidder to bring the offer in line with the project budget.

4. Reviewing the Low Bid:

Following the bid opening the low bid should be reviewed to ensure that:

- the bid submission was technically and legally responsive to the solicitation for bids; and
- the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled.

If, in the opinion of the project engineer and the city/county attorney, the low bid proves to be unsatisfactory for any reason, and the Grantee chooses to use the next lowest bidder, a statement of justification must be sent to the low bidder with a copy retained in the construction contract file. **It is critical that the City/County have criteria and a selection process in place to support the justification provided to the unsuccessful bidder.**

5. Debarring the Contractor and Subcontractors:

Prior to approval of and the awarding of a contract the Grantee must verify that the successful bidder and all sub-contractors are not on the Federal or State list of ineligible contractors and that they possess a State license that is current, active and in good standing. Submit a **Debar Request** to the CDBG Program Specialist. A confirmation e-mail is sent to the Grantee with proof of eligibility or ineligibility. Copies are retained in the CDBG files and in the Grantee's files.

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CDBG funds will be withdrawn from any contract entered into with a listed or otherwise ineligible contractor.

6. Council/Commission Approval:

A copy of the list of bidders and of the minutes showing the council/commission approval of the successful bidder is sent to the CDBG Program Administrator.

7. The Contract:

The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and the contract for each project subject to Davis-Bacon wage rates must contain a Davis-Bacon wage decision, its own labor standards clauses, and Section 3 Clause (24 CFR Part 135). These are often bound into the contract specifications. [Note: Copies of contracts need not be sent to the CDBG office but must be maintained in the Grantee's file for review when CDBG staff monitors the project files.]

8. Awarding the Contract(s) for Construction:

The CDBG Grantee should make the contract award within 30 days of the bid opening unless special circumstances exist.

Generally a bid is valid beyond sixty days only with the agreement of the selected bidder (but other possible options for the length of bid validity are possible and can be included in the bid solicitation document).

As noted, there also are time limitations on Davis-Bacon prevailing wage determinations. If a delay of longer than 60 days is anticipated in getting the contract signed, CDBG Grantees should contact the CDBG Program Administrator for guidance.

A complete copy of the signed contract and contract package is kept in the Grantee's file. A list of the bidders with the bid amounts and minutes of the Council or Commissions meeting approving the successful bidder is sent to the CDBG Program Administrator.

9. Preconstruction Conference:

CDBG requires grantees to conduct a Preconstruction Conference to help ensure compliance with state and federal labor standards requirements. The Preconstruction Conference should be held soon after the contract award. Contact the CDBG Program Administrator with the date of the meeting. Generally CDBG participation occurs through a conference call. The Wage Comparison Worksheet and the agenda for the meeting should be sent to the CDBG Program Administrator and Program Specialist prior to the conference. A Preconstruction Conference Checklist is included at the end of the chapter.

The prime contractor, his foreman or construction superintendent and the person on his staff who will be preparing payrolls should attend the preconstruction conference. Representatives of all identified subcontractors should also be present at the conference. In addition, key representatives of the grantee's staff who will be involved in the project and the project engineer should attend.

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The purpose of a Preconstruction Conference is to advise the contractor and subcontractors of their responsibilities regarding the project, including labor standards and equal opportunity requirements. Additionally, it is an opportunity to review the technical specifications of the project, contractual requirements, including labor and performance schedules and other contract obligations and responsibilities. The labor standards applicable to the project should be described in detail. It is highly recommended to use the pre-construction meeting to introduce other compliance matters such as the Section 3 employment and training, Fair Housing, Equal Employment and Procurement, and the Language Access Plans (LAP) to the contractors and subcontractors.

A preconstruction conference also serves as an opportunity for all parties to discuss:

- how the project is expected to progress,
- the schedule for completion,
- who has review authority for contracts,
- the method and schedule of payments and change orders,
- any outstanding contract documents, and
- the posting of Davis-Bacon posters at the construction site.

Document the preconstruction conference with meeting minutes that include a copy of the attendance roster and discussions of construction inspections, progress and contractor payment requirements and other issues particular to the project. The Grantee is required to submit a copy of the pre-construction documents to CDBG. Grantees will receive confirmation of receipt from CDBG. CDBG should also have the MBE and Grantee Notification of Contractors and Subcontractors that list the bid advertising date, bid opening date, date of contract award, bid contract amount(s), date of pre-construction meeting, wage decision(s) used, and estimated construction start date. CDBG tracks this information to fulfill the reporting requirements to HUD.

A template for **Preconstruction Conference Minutes** that can be modified at the local level as deemed appropriate is included at the end of this section. Additional templates (**Preconstruction Conference Checklist** and **Preconstruction Conference Agenda**) are also included as optional planning forms.

10. Planning a Pre-Construction Meeting:

- 1) Identify participants- The number of participants will vary. In addition to the Grantee and the CDBG representative, attendees should include the prime contractor, the project manager, payroll clerk, and major subcontractors.
- 2) Reserve adequate space and notify participants- Notify participants of the meeting the purpose, and the date, time, location, and directions.
- 3) Prepare the materials- Prepare materials, including any notes, printed materials, supplies, equipment, handouts, and attendance roster.
- 4) Send the Agenda and the Wage Comparison Worksheet to all participants.
- 5) Organize the presentation- Organize what topics to cover in what sequence and how to document the meeting minutes.

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The day of the meeting:

- Introduce yourself and others.
- Explain purpose of meeting and timeframes.
- Pass out roster/attendance sheet.
- Prepare to review and summarize main points, and answer questions about the provisions included in the *Facts to Cover* section.
- Explain, where applicable, an example of a local case where a labor provision was misunderstood or ignored.
- Distribute handouts where appropriate.

Note: the Grantee is expected to review the CDBG requirements. CDBG staff members will contribute as needed.

11. Labor Standards to Discuss:

The Grantee has sent or distributed the Wage Comparison Worksheet that covers all job classifications and wages. It is critical that this is reviewed at the preconstruction conference to ensure all stakeholders are in agreement on wages to be paid. This important document is used to verify payrolls and is the guideline that helps alleviate potential payroll problems.

The “base rate” should include any additional pay from the areas and zones. Add in the fringes, if any are listed; the total is the amount the classification is to be paid. Compare the Davis-Bacon and state rates, if applicable. Under the “Rate to be Paid” column, enter the higher amount of the two. The last column, “Fed/State” is where Federal or State is designated.

During the 2012 Grant Administration Workshop, there were questions regarding (1) zone pay and (2) calculation of overtime on Electricians (only). The Department of Labor: Wage and Hour Division in Las Vegas, NV, Senior Investigator and Anthony Griswold, Labor Relations Specialist with HUD Labor Compliance, were asked to clarify calculations for:

- 1) Zone pay and base rate;
- 2) The percent noted after the fringe on the Wage Determination page for Electricians.

Response to questions submitted for clarification:

- 1) Zone pay is added to the base rate.
- 2) **For Electricians only:** The General Decision Number sometimes gives the base rate (example \$35.40) and the fringe with a percent after the fringe (\$13.02+3%). Other times it shows the fringe without a percent.

Question: Is the 3% calculated on the base or on the fringe?

Answer: The percent is calculated on the base (plus the zone, if applicable). The result is then added to the fringe.

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Example:

Base \$10.00
Fringe \$ 5.00
Zone \$ 2.00

- 1) $\$10.00 + \$2.00 = \$12.00$ or base rate
- 2) $\$12.00 \times 3\% = .36$
- 3) Fringe @ $\$5.00 + \$0.36 = \$5.36$
- 4) Prevailing Wage = $\$17.36$

Overtime is calculated on the base rate of \$12.00 (not on base rate + fringe).

Topic/Items to Cover:

The grantee can use the preconstruction conference to clarify any questions regarding rates of pay and calculations. The meeting can also provide an opportunity to clearly present the Federal statutory compliance requirements as well as performance expectations. Items that should be covered at the preconstruction conference include, but are not limited to the following:

- Provide and review with the contractor with a copy of HUD's "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects", available for download at:

<http://portal.hud.gov/hudportal/documents/huddoc?id=4812-LRguide.pdf>

- Prime contractors are responsible for compliance of all contractors, including labor provisions and wage decisions in all contracts, providing subcontractors with forms and guidance, ensuring access to employees on site for interviews, and certifying weekly payrolls for employees. Because the prime contractor is responsible for the actions and compliance of the subcontractors, it is important to educate the subcontractors on the requirements, including reporting requirements and granting access to employees for interview purposes.
- Subcontractors are responsible for preparing and submitting certified weekly payrolls, ensuring compliance by sub-tier contracts, including labor provisions and wage decisions in contracts, and access to employees on site for interviews. All laborers and mechanics are covered regardless of any contractual relationship alleged to exist. Thus, subcontractors that work alone and have no crew must be paid weekly, but they may not certify to payment of own wages (may not sign own payrolls). The exception is owners of business working with their crew.
- All provisions outlined in the Federal Labor Standards Provision must be complied with and are legally binding.
- All contractor/sub-contractors must provide contractor ID numbers and the Federal ID Number (88-XXXXXX in Nevada) These identifications are used to report on the Grantee Notification of Contractors and Subcontractors and the Minority Business Enterprise (MBE) reports.

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- The contractor must submit weekly certified payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors. **DO NOT USE THE PAYROLL FORM USED BY NEVADA LABOR COMMISSIONER'S OFFICE. COMPANY PAYROLL RECORDS (COMPUTER PRINTOUT) MAY BE USED BUT MUST BE ACCOMPANIED BY THE FEDERAL PAYROLL CERTIFICATION FORM WH-347.**
- Wages paid must conform to those included in the wage rate decision in the contract. Discuss the classifications to be used. If additional classifications are needed, contact CDBG immediately.
- A copy of the wage rate decision and the wage rate poster must be posted at the job site (in English and Spanish, if applicable).
- The higher of the Federal (D-B @ \$2,000) or State Prevailing Wage (State Prevailing @ \$250,000) must be paid, if State wages apply.
- Employee interviews will be conducted periodically during the project.
- 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 the program.
- If State Prevailing is the wage decision, explain that four 10-hour days must be agreed on by the laborer/mechanic prior to any work on the project. A simple agreement must be signed by the workers that they understand they are working four 10-hour days. If there is no such agreement, the workers are entitled to two hours of overtime, by Nevada State Law.
- If the contract is \$250,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week (Federal) and 10 hours in a day (State of Nevada), and that failure to pay workers at least time and a half whenever overtime violates the CWHSSA. In addition to restitution, noncompliance with this law 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. **Please note that if employees are working four (4) ten (10) hour days, the contractor must have employees sign an agreement confirming they understand the work hours.**
- No payroll deductions can be made that are not specifically listed in the Copeland Anti-Kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
- Provide contractor with posters for the job site, such as the "Notice to All Employees Working on Federal or Federally Financed Construction Projects." These posters and others that are required are available on the DOL's website at:
<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

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- Discuss compliance monitoring that is 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 and potentially restitution, liquidated damages and/or recommendation for debarment.
- Review Equal Opportunity and Fair Housing Requirements:

Equal Employment Opportunity Certification: This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). This provision requires certain employers to have formal affirmative action plans. It applies to contractors who have federal contracts in excess of \$50,000 and more than 50 employees. In most cases in rural Nevada, this will not apply. However, the contractor and subcontractors still need to make the certification.

Section 3: The purpose of Section 3 is to ensure that employment and other economic opportunities generated by CDBG funds shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who reside in government-assisted housing and to business concerns which provide economic opportunities to low- and very low-income persons. The requirements apply to contractors and subcontractors performing work on Section 3 covered contracts for which the amount exceeds \$100,000. The requirements of Section 3 are found in the Supplemental General Provisions.

12. Frequently Asked Questions:

The following questions are excerpts from “*Preconstruction Conferences: A HUD Guidebook*” and should be covered during the pre-construction meeting.

1. What are prevailing wage rates and who gets them?

Main Points: The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computer by the Department of Labor and are issued in the form of a Federal Wage Determination/Decision. The contract includes this wage decision and lists each classification of worker you will use on this project and the rates you must pay each classification. The wage decision covers laborers, mechanics, apprentices, and trainees for all work at the site, work transporting materials to and from the site, and manufacturing or furnishing of articles, supplies, or equipment on-site.

Suggested Handout: Wage Decision

2. How frequently are wages required to be paid?

Main Points: Wages must be paid in full at least once a week. Deductions permitted by the Secretary of Labor are noted below:

- 1) Any deduction made in compliance with the requirements of Federal, State, or local law (e.g. Federal/State withholding taxes, Social Security taxes).

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- 2) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when repayment is made without discount or interest. A “bona fide prepayment of wages” is considered to have been made only when cash or its equivalent has been advanced to the person employed in such a manner as to give him/her complete freedom of disposition of advanced funds.
- 3) Any deduction of amounts required by court process to be paid to another unless the deduction is in favor of the contractor, subcontractor, any affiliated person, or when collusion or collaboration exists.
- 4) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, representatives of the employer, or both, for the purpose of providing (from principal or income or both):
 - a. Medical or hospital care, pensions or retirement, death benefits, workers compensation
 - b. Insurance for any of the foregoing- unemployment benefits, vacation pay, savings accounts
 - c. Similar payments for the benefit of employees, their families, and dependents, so long as:
 - i. the deduction is not otherwise prohibited by law if it is:
 - ii. voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done, and such consent is not a condition either for the obtaining of or for the continuation of employment, or provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees
 - iii. No profit or other benefit is otherwise obtained, directly or indirectly by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise
 - iv. The deductions shall serve the convenience and interest of employees.

3. How can workers not listed on the wage determination be used?

Main Points: Make sure all classifications (and sub-classifications, e.g. laborers) intended for use are listed on the wage decision. If classifications intended for use are not listed, request them using the HUD Form 4230A with a copy of the original wage decision(s) obtained to CDBG, who will forward the request to HUD Office of Labor Relations (OLR). This process typically takes 30-45 days.

Suggested Handout: Request for Additional Classification and Rate; Reporting Additional Classification and Rate (HUD Form 4230A).

4. Can contractors hire anybody they want?

Main Points: For the most part, you can hire anyone you wish. The exceptions are:

- Any contractor or subcontractor who has been suspended or debarred cannot be hired. It is the grantee’s and prime contractor’s responsibility to ensure that subcontractors intended for use are eligible.
- Any person under the age of 16.
- Any person under age as proscribed by Federal or State law.

5. What do workers have to be told about their wages?

Main Points: Contractors are required to display the U.S. Department of Labor Wage Poster (WH 1341),

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other required labor posters, and the Wage Determination that applies to the project in a conspicuous place at the job site. Failure to do this can be interpreted as a breach of contract. If the “additional classification” process was used to obtain a rate for a classification not included on the wage determination, the approved additional classification must be posted as well.

6. What if contractors want to hire apprentices or trainees?

Main Points: If contractors want to hire apprentices or trainees and pay them less than the journeymen wages, the apprentice or trainee must be enrolled in an apprenticeship or training program approved by the Department of Labor. Written evidence of their enrollment must be submitted to the contracting officer. The terms for hiring apprentices or trainees must be set forth in the pay schedule accompanying the certificate approving the program. An approved program can also state the proportion or apprentices (or trainee) that can be hired, given the size of the workforce.

Trainees or apprentices must be paid no less than the percentage of journeymen wages specified for the apprentices’ stage of training. Should DOL withdraw approval from the State-run training program (by certified letter), contractors must pay the trainees full wages required for the classification of work they do as listed on the wage determination, or appeal the decision (within 30 days after receiving the certified notice).

7. Can you use “helpers”

Main Points: Helpers are not allowed on this project.

8. When must overtime be paid?

Main Points: Time and a half must be paid for all hours worked in excess of 40 hours per week on the job site. Time and a half is one and one-half times the base hourly rate paid in wages (excluding fringe contributions made) in cash or in kind. Fringe benefits must be paid for each hour worked, including those over 40 per week. There are strict penalties for failing to pay overtime when it is due.

If Nevada State Prevailing Wages apply (project over \$250,000), over time must be paid for any hours over eight (8) hours in one day, unless the employer and employee have an agreement to work four (4) ten (10) hour days.

9. When must fringe benefits be paid?

Main Points: If the wage determination lists fringe benefits, they must be paid to the employee in cash or fringe benefits an amount which equals the total of the basic rate and fringes appearing on the determination. Any combination of cash payments and fringes is allowed, provided that the part the employer provides is:

- a. Explained to all employees in writing;
- b. Administered through a third party or
- c. Through an actuarially sound, enforceable and fully funded commitment.

If the employee works overtime, the premium must be computed on the basic hourly rate shown on the wage decision, even if the employer pays less than this amount in cash because of increased fringes.

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10. What if the employer wants workers to buy their own fringe benefits?

Main Points: If the wage determination included fringe benefits, the employer can either provide those benefits provide the value of those benefits in cash (the value on the wage determination).

11. What if a worker disputes the wage rate or classification on the payroll?

Main Points: If a worker tells an employer that they think they are improperly classified or underpaid, and an agreement cannot be reached, the dispute must be documented in writing and reported to the grantee and CDBG.

12. How do you record hours and pay for a worker that works in more than one classification?

Main Points: If a worker works in more than one classification during a pay period, each classification and the applicable rate of each must be show. You must either: 1) submit a time card signed by the worker showing the hours worked in each classification and the rate of pay for each or; 2) have the worker sign the payroll opposite his/her name and rate. If you do not take one of the two steps, you must pay the higher rate for both classifications. This same method would be appropriate for workers working on a project that requires multiple federal wage determinations.

13. What prevailing wages are used on a joint funded project?

Main Points: On a project that involves both state and federal prevailing wage requirements, the wage rates and overtime provisions that are the most beneficial to the employee must be paid. The higher of federal or state wage rate is paid.

14. Are relatives covered by the labor standards provisions?

Main Points: There are no exceptions made in the enforcement of prevailing wages requirements on the basis of family relationships for relatives who are performing work on the project site.

15. Are officers of corporations covered by the labor standards provision?

Main Points: Officers of corporations are considered employees of the corporation and therefore subject to prevailing wage requirements.

16. Is cleaning performed on the project site covered?

Main Points: Cleaning performed during the construction period is subject to prevailing wage provisions. This work will usually fall under the general laborer classifications.

17. Is piecework permitted on this project?

Main Points: Employees performing work on a piecework basis (e.g. 9cents per square foot) are not considered self-employed subcontractors. They must be paid the prevailing wage rate for the work performed. To determine the employees' rate of pay, divide the gross amount earned by the number of hours worked. The result must meet or exceed the minimum hourly rate.

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18. What wage information needs to be reported?

To the Grantee: Certified weekly payrolls (WH-347 or equivalent). Discuss when to submit them and to whom, and any other reports, certifications, documents.

To the State: Copy of wage decision(s) used, copy of preconstruction meeting minutes, Semi-Annual Labor Report (HUD Form 4710).

Suggested Handout: Sample WH-347 and HUD 4710 forms

19. What are the Equal Employment Opportunity obligations?

Main Points: Review requirements of Executive Order 11246, 24 CFR Part 30, and other related issues. Please review the Section 3 Technical Assistance Handbook for more equal employment opportunity guidance.

20. What does the State (and HUD) do to assure compliance?

Main Points: The grantee monitors contractors, State (CI) monitors the grantee, HUD monitors the State and DOL can monitor all parties. Monitoring for compliance involves spot checks, in depth monitoring as deemed appropriate, examination of documentations, and investigation of complaints.

14. What if workers are underpaid?

Main Points: If a contractor or subcontractor underpays laborers or mechanics, the prime contractor needs to be notified in writing by the grantee (and/or by the party conducting the monitoring). The letter will describe concerns, violations, and methods of corrective action.

21. What can happen if labor standards are not complied with?

Main Points: Violations of labor standards can result in delay of funds, freezing of funds, termination of contract, initiated criminal proceedings, and debarment.

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PHASE III: CONSTRUCTION & MONITORING

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1. Contract Award Notification:

Once a bid has been awarded, the project enters the construction phase. In this stage, it is necessary to monitor the performance of the contractor and compliance with the applicable rules and regulations. From the standpoint of the CDBG program, labor standards are the most significant activity of this phase.

The purpose of this section is to help the Grantee ensure that all construction work complies with state and federal laws. The Construction Checklist details the activities that are required to comply with provisions of applicable laws and can be used to help the Grantee track compliance.

2. Notice to Proceed:

Upon execution of the contract and holding the pre-construction conference, the Grantee may then provide the prime contractor(s) with a Notice to Proceed. This notice establishes the construction starting date and the estimated date of completion. A copy of the Notice to Proceed must be retained in the Grantee's file. It is not required to send a copy to the CDBG office.

In the event a contractor is unable to complete a construction project, the Grantee may assess the contractor for the costs the Grantee must incur in order to complete the project. This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts needed to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the contract.

3. Posting Wage Decisions:

During the Preconstruction Conference and at the time the contract was awarded, the Wage Comparison Worksheet (WCWS) was signed off on by the Grantee, the CDBG office, the Contractor and Sub-contractors. This WCWS is the guideline for the correct wage rates to use for the project. As of the pre-construction conference, the contractors and sub-contractors know what the labor requirements are and what trades and crafts will be used.

These job classification wage rates that apply to the project must be posted at the job site in a highly visible location. The decision contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work. They identify work classifications, basic hourly wages, fringe benefits, and must be posted in an area at the job site that is accessible to all workers. The contractor may opt to post a copy of the Wage Comparison Worksheet. However, a copy of the actual Wage Decision must be available for employee review.

Once the contractor begins work, it becomes necessary for the Grantee to confirm that the Davis-Bacon and state prevailing wage requirements are being met. In order to do so, the Grantee must review each contractor and subcontractor's payrolls on a weekly basis. In addition, employee interviews are used to verify the information submitted on the payroll reports.

Certain workers on construction projects are not subject to Davis-Bacon wage rates. These include the owner(s) of the company, superintendents, "project foremen" (i.e., foreman who spend less than 20 percent of their time engaged in labor), watchmen, water carriers, messengers, clerical staff, volunteers,

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prisoners (NDF crews) and participants in HUD certified summer youth employment programs. Family members of owners are not exempt unless they are co-owners of the business.

Apprentices are also exempt from Davis-Bacon provisions because their compensation is negotiated and set by the Nevada Apprenticeship Council. If a contractor claims that an employee is an apprentice, you must obtain a copy of that person's apprenticeship certification from the contractor. Only certifications from the Nevada Apprenticeship Council are valid. Certifications from other states cannot be accepted. If a certification is not provided, the "apprentice" must be paid journeyman rates.

4. Submission of Certified Weekly Payrolls:

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 should 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 is held accountable for any wage restitution that may be found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations.

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance - **WH-348, on the reverse of WH-347**), and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. For HUD guidance on detecting falsification through frequent payroll review and interview comparison, review HUD's *Making Davis-Bacon Work* guides.

Payrolls for the contractor and all sub-contractors are submitted to the CDBG office to the attention of the CDBG Program Specialist. Should there be any irregularities between the payrolls for any employer on the project, the CDBG office should be notified at once. All restitution issues must be directed to the CDBG office also. While the contractor is responsible for submitting the weekly payrolls for all subcontractors, it is the responsibility of the Grantee to ensure all payrolls are received and reviewed for accuracy prior to sending to the CDBG office.

Certified payroll reports should be submitted along with the Statement of Compliance using DOL Form WH-347 or equivalent that includes all of the same elements (including the Statement of Compliance) in order to determine compliance with applicable regulations. Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction contracts and subcontracts to submit payroll information. Both the form and the instructions can be accessed from the DOL website at:

<http://www.dol.gov/esa/whd/forms/wh347instr.htm>

It is recommended that the U.S. Department of Labor payroll report be used. However, many employers now use payroll software. This is acceptable but the format must include the information found on the U.S. Department of Labor payroll report. **DO NOT USE THE NEVADA LABOR COMMISSION'S FORM**, as it does not contain all of the information required by CDBG.

Regardless of the form used, the federal government requires the certification of compliance with labor standard provisions that is included on the backside of the federal payroll form. Few employers have

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the certification built into their own forms. To remedy this, the contractor or person responsible for the payroll must complete, sign and submit the Certification page of the U.S. Department of Labor payroll report. By signing this certification the contractor/payroll clerk confirms that labor standards were followed and no improper deductions were made.

Payrolls must be submitted for each week of actual work. Each contractor, subcontractor and any lower tier subcontractor should complete and submit payrolls no later than seven work days following the completion of the workweek. Payroll reports should be reviewed by the grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms should 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;
- The Statement of Compliance has been signed by the owner or an officer of the firm. Self-employed contractors cannot self-certify their own weekly payrolls.

Any discrepancies and/or falsification indicators must be reported to CDBG, 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 should contact the CDBG Program Administrator for assistance if a violation occurs. A Payroll Evaluation Checklist is recommended for grantee use and is included at the end of this section.

If there is a payroll period where the contractor or subcontractor had no employees working on the project for that week, a **“Nonperformance Payroll”** form should be submitted. This shows the continuity of the pay periods and accounts for gaps in the payroll reports. A sample can be found at the end of this section.

Permissible deductions include taxes, deductions the worker authorizes in writing, and deductions required by court processes. An employer may not withhold, deduct, or divert any part of an employee's pay other than those items required by federal and state law, unless the employee specifically consents to the deduction in writing or it is for a lawful purpose that accrues to the benefit of the employee.

An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kick-back" a portion of their pay. This is particularly common in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions should be treated as a serious discrepancy and should be resolved prior to making further payments to the contractor.

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5. Review of Payroll Reports:

It is the responsibility of the Grantee to review and initial the weekly payroll reports **on a weekly basis and to correct any irregularities**. If the payroll reports are not received from the contractor on a weekly basis, the local Grantee must take action to obtain them from the contractor. Failure to pay specified wages could result in contractor payments being withheld by the grantee until all such discrepancies are resolved. Copies of all weekly payroll reports and Statements of Compliance must be maintained in the grantee's project labor file.

The Grantee should check for the following items in the payrolls:

- Are the classification listed on the report realistic for the project?
- Are the correct rates being paid for each classification as compared to the wage rate decision?
- Were the wages calculated correctly?
- Did the contractor pay overtime to employees who worked more than 40 hours in a week?
- Are the wages shown on the payroll sheets the same as those given by the employee during the employee interview?
- Are all deductions permissible?

Once the Grantee has finished reviewing each payroll record, s/he should initial the report and place it in the labor file.

As noted earlier, the contractor may use their own payroll reports generated in-house. Regardless of the format used, the Grantee must review the report format to make sure that the proper job classifications, hours worked, rates paid and proper deductions are included in the report. If not, the contractor should use the U.S. Department of Labor payroll report form. In addition, the federal government requires the certification of compliance with labor standard provisions that is included on the backside of the federal payroll form. Few employers have the certification built into their own forms. To remedy this, the contractor must also submit a "Statement of Compliance" and submit it with a copy of the payroll report. The Grantee must ensure that its Certification accompanies each payroll report.

6. Employee Interviews:

The Grantee must conduct employee interviews with a Record of Employee Interview (HUD Form 11). A fully completed and signed form is maintained in the contract file. A sample form for conducting employee interviews is located in the Appendix. The purpose of employee interviews is to determine whether correct wages are being paid for the work being done.

There have been instances where contractors have underpaid or claimed unauthorized deductions on their weekly payroll reports. This is the reason why the Grantee or a representative of the grantee should conduct the employee interviews and **NOT** the contractor. After the interviews have been conducted, the Grantee should compare the employees' wage against the weekly payrolls submitted by the contractors. Underpayment of wages or unspecified deductions should be treated as serious discrepancies, and should be resolved by the Grantee prior to releasing further payment to the contractor.

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Frequency and Representation: There is no regulation that dictates the frequency of conducting employee interviews. Employee interviews are conducted based on the intensity and duration of the project, and must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any. A small project that takes a few days will have different frequency of interviews compared to a larger project that may run the course for several months.

For example, a small project such as a sidewalk installation that takes a few days may have only one instance of employee interviews. Whereas construction of a community center that takes several months, needs to have several instances of interviews. It is generally recommended to conduct interviews every two (2) to four (4) weeks, or at least once during the course of each phase of construction on each project.

All job classifications represented on the job must be included during the interview process. At least 10 percent of the workers in all trades onsite, and a least one in each job classification working at the site, should be interviewed. If the designated labor officer of the grantee notices discrepancies with payrolls and employee interviews, the frequency of employee interviews should increase.

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 decision, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor. If any discrepancies between onsite interviews, payrolls, and wage rates are identified, they need to be corrected.

7. Interview Protocols:

The following guidelines should be taken in to account when conducting employee interviews:

- The interviewer should be knowledgeable of construction trade practices.
- The interviewer should observe duties of workers before initiating 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).
- Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises. In cases of possible falsification of records, fear of reprisals, or intimidation, it may be more advisable to conduct the interview elsewhere, such as in the employee's home, at the agency's office, by mail, or another suitable place.
- The interviewer should see that the wage determination and other required posters are properly displayed.
- Employees of both the prime and subcontractors should be interviewed.

To initiate the interview, the authorized person shall:

1. Properly identify himself/herself.

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2. Clearly state the purpose of interview.
3. 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.
4. Advise the worker that he/she is being interviewed by an employee of the HUD assisted project.

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

1. The employee's full name.
2. The employee's permanent mailing address.
3. 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 to other work.
4. 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 decision.
5. 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:

1. Ask for any records.
 2. Arrange to re-interview the employee.
 3. Enter the worker's statement of his/her classification.
 4. Observe duties and tools used.
- If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.

If there are discrepancies, detailed statements are necessary.

- Enter any comments necessary.
- Enter date interview took place.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731).

- The payroll examiner must compare information on the Record of Employee Interview form (HUD Form 11) with the certified payroll (WH-347) 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.

8. Filing Labor Complaints:

When conducting employee interviews, HUD Form 4731 is used (Appendix L). If a worker thinks they may not have been paid correctly for construction or maintenance work performed on a HUD-assisted project, they can complete HUD Form 4730-E and submit it to HUD electronically at:

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http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/form4730e

Or HUD Form 4730 can be printed out, completed, and mailed to HUD to the following address:

U.S. Department of HUD
Office of Labor Relations
451 7th Street, SW, Room 2102
Washington, DC 20410

Workers can also submit complaints through the U.S. Department of Labor at:

<http://www.dol.gov/wecanhelp/howtofilecomplaint.htm>

or

<http://www.dol.gov/whd/regs/compliance/fairpay/complaint.htm>

or by calling 1-866-487-9243.

Information should include:

- The employee's name, address, and telephone number (with the best time of the day to be reached);
- Employee's job title and a description of the kind of work done;
- Rate, method and frequency of wage payment (e.g. paid weekly at \$9.00 per hour or paid a salary of \$900.00 twice each month);
- Number of hours actually worked each week;
- A description of the alleged violation(s) (e.g. my employer failed to pay overtime for extra shifts or failed to pay for time spent loading the truck);
- Date(s) of the alleged violation(s);
- The employer's name, address, telephone number and nature of business (e.g. school, farm, restaurant, etc.)

Please visit: <http://www.dol.gov/whd/america2.htm#Nevada> to obtain the address and telephone number for the DOL Wage and Hour Division Regional Offices for Nevada.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: <http://www.dol.gov/ofccp/>

If you are denied employment and/or contracting opportunities, you may have standing to bring a complaint at HUD under Title VI of the Civil Rights Act and/or the Housing and Community Development Act of 1974. You may also be eligible to bring complaints under other federal laws. The US Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information

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(medical history or predisposition to disease). For more information about your rights, please contact EEOC at: www.EEOC.gov.

9. Investigation of Labor Standards Violations:

Violations of labor standards may be found as a result of an investigation of a worker complaint or during a routine examination of payrolls or compliance reviews. The local government grant administrator is responsible for investigating and documenting violations.

If a violation is the result of an employee complaint, you need to ensure that the employee's identity is protected to prevent retaliation.

If a violation is evident, the Grantee should first work with the contractor on an informal basis to resolve the finding. Where the contractor refuses to address the violation or continues to violate the labor standards provision, the grantee must report the violation to the CDBG Staff. CDBG Staff will work with the employer to resolve the issue. If the problem cannot be resolved at the staff level, the CDBG Staff will work with HUD and, if necessary, the Nevada Labor Commissioner and the U.S. Department of Justice to determine actions required. The contractor should be informed that an unresolved finding could result in debarment and make the contractor ineligible for further federally assisted construction projects.

The contractor has the right to appeal any findings. Documentation during investigation of violations is critical. The contractor can win an appeal if there is poor documentation of the violation and sanctions.

Documentation should include:

- the source from which the information was derived;
- descriptions of the violation;
- computation of back wages;
- liquidated damages, if any;
- actions taken by grantee to obtain resolution of the situation;
- actions taken by the contractor to correct the violation;
- any restitution or liquidated damages paid or computed;
- Statements of Compliance not included with the payroll reports.

The most common problems the CDBG Staff finds with local government labor monitoring include:

- Failure to include Labor Standards provision in bid specification contracts.
- Use of incorrect or obsolete wage rate determinations.
- Labor Standards file not established.
- Weekly payrolls not obtained.
- Weekly payrolls not checked and initialed by the reviewer or not checked on a weekly basis.
- On-site employee interviews not conducted or interviews not checked against the payroll.

10. Monitoring of the Contractor(s) by the CDBG Grantee:

Once the project is under construction, the CDBG Grant Administrator must monitor compliance through review of weekly payrolls and on-site monitoring including worker interviews. Throughout the

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construction period, the CDBG Grantee is responsible for monitoring the contractor(s) for performance regarding the project's technical specifications and for compliance with all federal, state, and local standards and the terms and conditions of the contract(s).

Monitoring activities include checking for: wage rate determinations, contractual/sub contractual provisions and certifications, verification of bidder eligibility, grantee monitoring and enforcement of labor standards compliance, and actions taken by grantees to investigate and follow-up on violations. It is recommended to self-evaluate using the HUD Community Planning and Development (CPD) Monitoring Handbook, Chapter 23 – Labor and review CDBG's monitoring form in the Monitoring chapter. The Handbook and Chapter 23 – Labor are located at the following web site:

<http://www.hud.gov/offices/cpd/library/monitoring/handbook.cfm>

The Grantee must conduct regular compliance monitoring for civil rights, labor and other requirements on an on-going basis. Refer to Chapter X: Civil Rights, Equal Opportunity & Fair Housing for further guidance. There are specific reporting requirements of contractors to demonstrate compliance with civil rights regulations. These include, but are not limited to, the Grantee Notification of Contractors & Subcontractors form, the Minority Business Enterprise (MBE) report, and the Section 3 Workforce Breakdown, which must be completed by the CDBG Grantee from information supplied by the contractor.

In addition to the activities listed above, the CDBG Grantee, in coordination with the project manager, should conduct performance monitoring of the construction contractor(s) that would include the following elements:

- General supervision, including identifying the need for any construction adjustments and preparation of contract amendments.
- Change orders that (1) affect the approved scope of work as described in the CDBG contract with the CDBG Grantee and/or (2) exceed \$5,000 require prior CDBG review and approval before such change orders are signed. This also involves reviews of major changes to the estimated construction schedule.
- Quality control to ensure compliance with technical specifications and conformance with codes and standards.
- Quality control to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications; and
- Certification of pay estimates to be used by the Grantee's financial officer to verify estimated costs for partial payments to the contractors.

11. Maintaining Records: Labor Standards and Construction

Please maintain all proper documentation of compliance with state and federal labor standards. To ensure compliance with labor standards and documentation, copies of all payrolls must be maintained in the Grantee's project file with documentation that the grantee has reviewed the payrolls and determined the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are paid.

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Evidence that the contractor has made partial payments to any subcontractor or suppliers must be documented. Where the project was awarded based on a fixed-price bid, the contractor should prepare a cost breakdown showing the amount of funding associated with each element of the construction contract. This information can be then be used by the Grantee for performance monitoring and for determining the accuracy of requests for payments.

A copy of this information, which is usually incorporated into the contractor's payment request form, should be included in each of the CDBG Grantee's draw requests to facilitate CDBG's financial review requirements.

Records must be kept for five (5) years beyond closeout of the CDBG grant. The labor standards compliance documents contain highly sensitive and confidential information. Please minimize risk of improper and/or unnecessary disclosure. Grantees must maintain documentation to demonstrate compliance with the labor standards requirements including, but not limited to:

- Wage Decision(s)
- 10-Day documentation (ensuring wage decision is still current)
- 90-Day documentation (ensuring wage decision is still current)
- Any contractor certifications concerning labor standards (or cross reference contract file that includes executed certifications)
- Bid advertisement
- Copies of all bid responses and minutes of the bid opening
- Documentation of submitting bid documents to CDBG
- Verification of contractor/subcontractor eligibility
- Notice of contract award
- Executed construction contract with labor provisions included
- Pre-construction meeting minutes and associated documentation
- Weekly payrolls, Statements of Compliance, and evidence that payrolls were reviewed
- Employee interviews and documentation of review to detect any discrepancies
- Evidence that the on-site interviews were checked against payrolls and the applicable wage rate decision
- Site visit reports and engineering inspection reports
- Evidence of restitution/resolution of identified discrepancies
- Complaints from workers, if any, and actions taken
- Liquidated damages assessed, appeals, if any, and outcome
- Semi-Annual Labor Report(s)
- Photo of labor posters on the job site

For each prime contract, the Grantee should maintain a Construction Contract file and a Labor Standards file with the following documentation inserted as required by this chapter and Chapters (Civil Rights) and Chapter (Labor Standards).

Note: Information to be retained in the Labor Standards file is noted with an asterisk (*) and all other documents should be retained in the Construction Contract file, as follows:

- design and cost estimates
- evidence of easements and acquisition
- bid documents, including required civil rights, labor, and other provisions

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- evidence of bid advertising
- minutes of bid opening including tabulation of bids
- evidence of low bid review
- letter of request for contractor eligibility *
- Federal and State Notice of Contractor Eligibility [debar] *
- copy of Notice of Contract Award
- executed contracted documents with attachments
- Notice of Contract Award and Pre-construction Conference (Exhibit 9-E) *
- minutes of pre-construction conference *
- copy of Notice to Proceed
- monitoring and inspection reports
- Grantee Notification of Contractors & Subcontractors form *
- contractors' weekly payrolls and signed Statements of Compliance *
- evidence of weekly review of payrolls by the grantee's designated reviewer
- records of construction worker interviews *
- evidence of any violations and resolutions of violations *
- evidence of the final inspection
- notice of acceptance of work
- lien releases from all contractors and suppliers; and
- evidence of disposition of outstanding claims.

12. Grantee Responsibilities:

CDBG Grantees have construction management responsibilities that can be met by following these action steps:

- 1) Select engineering and/or architectural services in accordance with federal and state procurement standards appropriate for competitive negotiation.
- 2) Prepare design plans and specifications and bid document items that include the required federal and state construction contract provisions and obtain required reviews and approvals from CDBG.
- 3) Provide for the appropriate advertisement of bid solicitation and bid security procedures.
- 4) Conduct the bid opening following a properly proscribed bid review procedure.
- 5) Award construction contracts to the lowest responsible bidder within the required time.
- 6) Hold a pre-construction conference to inform the prime contractor and all subcontractors of the labor standards and civil rights obligations.
- 7) Provide the required notices when initiating construction activities.
- 8) Monitor contractor activities throughout the construction period to ensure:
 - a) performance is in accord with the technical specifications;

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- b) compliance is maintained with all federal, state, and local regulations and standards and the terms of the contract are completed;
- 9) Conduct the final inspection and file the required notices and reports with the appropriate agencies.

The CDBG Grant Administrator performs a variety of actions, depending on the type of project. Ultimately s/he should have the authority to withhold funds from contractors when circumstances warrant. Grantee responsibilities include but are not limited to the following:

- Ensure that bid documents, contracts, and subcontracts contain Federal labor standards clauses in any contract (HUD 4010 Form) as well as applicable wage decision(s);
- Verify contractor eligibility (debarment status);
- Conduct on-site employee interviews with laborers & mechanics (HUD 11 Form);
- Comply with posting requirements;
- Review certified weekly payrolls and compliance statements:
 1. WH-347 Form (or equivalent)
 2. Compliance statement (original signature);
 3. Payrolls (due weekly);
 4. Identify first and final payroll;
 5. “No Work” payrolls; all weeks must be accounted.
- Ensure compliance with requirements and maintain documentation of actions;
- Refer investigations to CDBG/HUD;
- Submit required reports (HUD 4710)

13. Prepare Final Wage Compliance Report:

At the completion of the project, the Grantee must prepare a “Final Wage Compliance Report” and retain it in the Labor Standards file. A copy is submitted to the CDBG Program Specialist and also is reviewed when the files are monitored. The “Final Wage Compliance Report” outlines any wage rate disputes and their resolution by the grantee. A sample “Final Wage Compliance Report” can be found in the Appendix.

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PHASE IV: PROJECT & GRANT CLOSEOUT

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GRANT CLOSE OUT:

Once the project has been completed and all grant funds are expended, the grant must be closed. In order to accomplish that, the Grantee must submit the following forms to the CDBG Program Specialist:

1. The Financial Summary;
2. The Final Quarterly Report;
3. The Final Wage Compliance Report;
4. The Disallowed Audit Report;
5. The Project Benefits Report.

A CDBG staff member will conduct a closing review of the grant file. Should any additional documents be required, s/he will contact the Grantee in an effort to facilitate a timely closing of the grant file. All construction grants must be site monitored before the grant can be closed.

Refer to Chapter VIII: Project Closeout for additional guidance regarding closing a CDBG project.

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SUPPLEMENTAL INFORMATION

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DAVIS-BACON PAYROLL INFORMATION

Payment of Wages:

Please review the frequently asked questions section from *HUD's Preconstruction Conference Guidebook* and *Davis-Bacon Contractor's Guide* for information about the following:

1. All employees working on the site of the work of a federally funded highway construction contract must be paid unconditionally and not less often than once a week. Therefore, the contractor must establish a fixed workweek (Sunday through Saturday for example) and a weekly payday (such as Friday, or the preceding day should such payday fall on a holiday). Any deviation from this schedule may indicate the contractor is attempting to avoid the overtime requirements.
2. Employees must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment.
3. Only payroll deductions authorized by law, or permitted under the regulations issued by the Secretary of DOL, may be made from an employee's weekly paycheck.
4. The payment must be computed at wage rates not less than those contained in the Davis- Bacon wage rate decision incorporated into the contract, regardless of any contractual relationship that may be alleged to exist between the contractor, its subcontractors, and their employees.
5. Employees must be paid the appropriate Davis-Bacon wage and fringe benefits for the classification of work actually performed, without regard to skill, except those employees enrolled in approved apprenticeship and on-the-job training programs.
6. Apprentices and trainees must be paid at not less than the rate specified in the registered or approved program for the apprentice's or trainee's level of progress, expressed as a percentage of the journey worker-level hourly rate specified in the applicable Davis- Bacon wage rate decision. Apprentices and trainees must also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program.
7. If an employee performs work in more than one job classification during a single payroll period and the classifications require different wage rates, the employee must be paid the highest rate for all hours worked unless the contractor's payroll records, or other affirmative proof, indicate which of the hours were included in the periods spent in each classification of work. The contractor may then pay not less than the rate specified in the Davis-Bacon wage rate decision incorporated into the contract for the job classification that describes each type of work performed. Contractors must keep accurate records of such periods of work and ensure the employee is paid at the correct rate for periods of work performed in each job classification.
8. If the job classification is known but is not included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, must be conformed after the contract has been awarded.

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Overtime Hours:

1. The Contract Work Hours and Safety Standards Act (CWHSSA) applies to all federal-aid highway construction contracts subject to DBRA. CWHSSA requires prime contractors and subcontractors with covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over forty (40) in a workweek.
2. The basic rate of pay under CWHSSA is the straight time hourly rate and cannot be less than the basic hourly rate required in the Davis-Bacon wage rate decision incorporated into the contract.
3. Under DBRA, amounts paid as fringe benefits, both contributions made to bona fide fringe benefit plans and cash payments made to employees, are excluded in computing overtime obligations under CWHSSA.
4. CWHSSA applies to laborers and mechanics for the time spent on DBRA covered contract work only (i.e., total up all time each employee spent working on DBRA covered contracts and exclude all commercial, non-government work).
5. In the case of an employee working for two or more employers, all hours worked under the same contract are to be counted for purposes of CWHSSA overtime even though the employers are disassociated or otherwise separate, such as a prime contractor and a subcontractor. This also applies to employees of a temporary employment agency.
6. An employee working for the same contractor on two or more separately awarded contracts subject to DBRA and CWHSSA is entitled to have the hours worked on all such covered contracts combined and to receive overtime for all such hours worked in the workweek in excess of forty (40). This also applies to employees of a temporary employment agency.
7. When an employee performs two or more types of work for which different hourly rates are applicable and the employee works on DBRA covered contracts and commercial, non-government work in a single workweek, DOL requires that the hours be segregated. This means they must be broken down as to the actual hours worked on the DBRA covered contracts and the actual hours worked on the commercial, non-government work using two separate weekly payrolls. The contractor cannot combine the DBRA hours and the non-DBRA hours and use the weighted average method to determine the overtime premium.

Fringe Benefits:

1. When hourly fringe benefits are listed on the Davis-Bacon wage rate decision, they may be paid
2. in the following manner:
 - a. Making payments in the amount of the required fringe benefits to an established program, funded or unfunded. Funded programs are those programs in which the payments are irrevocably made to a trustee or a third person, i.e., the program is established separately from the contractor's own organization. Unfunded programs are those in which the fringe benefit payments are made directly to a program provided from the general assets of the contractor's organization, such as vacation programs.

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- b. Making payments to the employee in the amount of the required fringe benefits.
 - c. A combination of the above methods.
3. It is the contractor's choice whether the fringe benefits are paid into an approved plan, directly to the employee, or a combination of partial payment directly to the employee and partial payment to a plan.
4. Fringe benefits are required to be paid on all regular and overtime hours worked. However, the required fringe benefit amount, as listed in the Davis-Bacon wage rate decision, is not calculated at time and one-half when figuring the overtime rate.
5. Apprentices and trainees must be paid fringe benefits in accordance with the provisions of the apprenticeship or training program.

DAVIS-BACON EXEMPTIONS

Most HUD-assisted construction work is covered by Davis-Bacon but there are some exceptions. The best and safest approach is whenever the contract/project involves construction work that is valued in excess of \$2,000 to assume that Davis-Bacon rates will be applicable and then look more closely to see if there is any reason for non-coverage. Grantees should consult CDBG staff members if there are questions about properly identifying the type of wage determination and/or modifications, for a determination as to whether Davis-Bacon applies if the situation requires or if the project category is unclear according to the thresholds criteria. CDBG staff will request additional guidance from HUD as needed.

The following activities are exempt from Davis-Bacon:

- If CDBG funds are paying for residential rehabilitation programs with small projects, specifically projects with fewer than eight (8) units;
- If CDBG funds only pay for real property acquisition;
- If CDBG funds only pay for engineering design and construction management costs (no construction contract/ trades involved);
- If CDBG funds only pay for purchase of equipment with no installation costs;
- If CDBG funds pay for equipment and installation when the cost of installation is less than 13% of the equipment (equipment cannot be broken out of a larger construction contract just to avoid prevailing wage);
- Apprentices employed in a bona-fide state approved apprenticeship program;
- Trainees employed in a DOL approved program;
- Volunteers where there is no conflict of interest (volunteer is not also a contractor or employee of contractor hired for the job);
- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to avoid the labor standards requirements is not permitted.
- 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, and certain pieces of equipment that would not become permanently affixed to the real property. Exempt equipment purchases would be those incidental to the project that require minimal installation costs.

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- 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;
- Contracts solely for demolition, when no federally-funded construction (which would require prevailing wage rates) is anticipated on the site;
- When CDBG funds are utilized in whole or in part to finance equipment, applicability of wage rates to the installation cost must be determined. An equipment analysis must be completed in which all items of equipment are included with an explanation of related installation/modification costs.

COMMON PROBLEMS

A **Labor Standards Evaluation Checklist** and a **Payroll Evaluation Checklist** can assist grantees with compliance and are at the end of the chapter. These are to supplement monitoring forms used by Grants Management. The following are some common problems with labor standards compliance.

- CDBG labor standards, equal opportunity and procurement, Section 3 language is not included in bid packages/contract documents
- Limited English Proficiency clauses are not included in the bid advertisement(s)- (review CDBG's Title IV Language Access Technical Assistance Handbook for more information)
- Inclusion of incorrect or modified or superseded wage decision in bid and contract documents
- Inconsistency in wage decisions utilized, yellow card data, and Semi-Annual Labor Report information.
- Absence of contractor's and especially subcontractor's signed CDBG required certifications for labor standards and prevailing wage compliance
- Absence of verification of contractor eligibility
- Pre-construction conference not held and payroll staff do not know what CDBG requirements are for weekly certified
- On-site employee interviews not held
- On-site employee interviews not checked against payroll
- Weekly payroll information incomplete or undocumented with holdings
- Restitution or liquidated damages not secured for contractor violations
- Final compliance report not prepared
- Record keeping is inadequate and kept in unsecured location

DAVIS-BACON APPLICABILITY EXAMPLES- TRUE OR FALSE?

- 1) If CDBG funds are used to renovate seven (7) single-family homes that are commonly owned and managed as rental properties, Davis-Bacon requirements do not apply.

TRUE - There are fewer than eight (8) homes.

- 2) Prevailing wage rate requirements apply to the use of \$100,000 in CDBG funds for the renovation of a 10-unit dormitory-style transitional housing facility, where residents may stay for up to 30 days but must have the facility during the day to seek employment.

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TRUE - Housing is non-residential in nature and residency at the facility is limited to overnight while seeking employment during the day. This will be building construction.

- 3) Prevailing wage requirements apply to the use of \$50,000 in CDBG funds for the conversion of a single-family house to an urban police precinct station.

TRUE - End use is nonresidential. Building rates apply.

- 4) Prevailing wage requirements apply to the use of \$50,000 in CDBG funds to convert a residential home currently used as an urban police precinct station into a two-unit duplex.

FALSE

- 5) If CDBG funds are introduced to an ongoing project, and the project would be covered by Davis-Bacon requirements, Davis-Bacon coverage is effective as of the award of the CDBG funds of the project.

FALSE - DB coverage is effective back to the beginning of construction.

- 6) The City of Hometown is preparing a new neighborhood business facade program. They will offer \$1,500 in CDBG grants to businesses that match 100% of the CDBG contribution for facade improvements (Painting, awnings, windows, doors, etc.) on their properties. The contract will be \$3,000 for this work. The use of CDBG funding triggers Davis-Bacon coverage.

TRUE

- 7) Self-employed contractors (sole proprietors) are not subject to Davis-Bacon prevailing wage requirements if they are licensed contractors.

FALSE - It doesn't matter if they're licensed or not.

- 8) For covered projects, the appropriate Davis-Bacon wage decision must be incorporated into the prime construction contract and all subcontracts.

TRUE

- 9) For covered projects, the appropriate Davis-Bacon wage decision must be posted at the construction site.

TRUE

- 10) The four broad categories of Davis-Bacon wage decision types are Building, Highway, Residential, and Heavy.

TRUE

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- 11) When an additional classification is required for a Davis-Bacon Residential (only) wage decision, first the local Building wage decision and use the best match possible of comparable trades.

FALSE- Can't borrow from any other wage decision.

- 12) Firms that provide temporary labor to perform work on projects covered by prevailing wage rates are not required to submit weekly certified payrolls.

FALSE - Temporary workers are treated the same.

- 13) Davis-Bacon applies when a city is using \$150,000 of CDBG money to replace a sewer line and repave streets using City Department of Public Works employees.

FALSE - City and county workers are exempt.

- 14) The owner of a building listed on the National Register of Historical Buildings is selling the structure to Joe Q. Public. Mr. Public has approached the Village of Anytown, and requested CDBG monies to assist in his purchase of the building. After purchasing the property, Mr. Public may need to contract for needed repairs and reconstruction work. Davis-Bacon will apply to the repair work.

FALSE - Prevailing rates don't apply to acquisition. Soft costs don't trigger Davis-Bacon under CDBG.

- 15) The City of Sunnyside is requesting CDBG funds to renovate a vacant manufacturing building currently owned by a private company. The private company will lease the building to a company who will manufacture plastic bottles and caps. Renovations include office space, restrooms, and loading docks. In addition, electrical, HVAC, plumbing, fire protection, and roof systems will be renovated/upgraded. Davis-Bacon building rates apply to the renovations of this project.

TRUE

- 16) The Village of Appleville will be using CDBG funds in the amount of \$90,000 for street improvements and \$130,000 in sewer and water line improvements. The streets and water/sewer lines are publically owned and operated and will continue to be publically owned and operated after improvements are completed. After completion of the street, water, and sewer line improvements, the Village plans to use non-federal funding to rehabilitate 10 individually owner occupied homes in the target area. Davis-Bacon Highway rates apply to the street improvements and DB heavy rates apply to the water and sewer line improvements. Davis-Bacon prevailing wage rates will not apply to the rehabilitation of the homes because they do not meet the unit threshold when using CDBG funds. Each owner occupied home is considered one unit for wage rate purposed.

TRUE - The street, water, and sewer line project in this case, are considered a separate project from the rehabilitation of the owner occupied homes (for federal labor standards).

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17) A county community revitalization project involves upgrading the existing waterline, installing two fire hydrants, grading roadside ditches, demolition and clearance of 12 units with no immediate plans to reconstruct, installation of on-site septic system to 4 owner-occupied households, and substantial rehabilitation to 4 owner-occupied households. All roadside, water, and sewer work will be contracted out by the county, and all housing rehab will be contracted out separately. Infrastructure costs will be funded primarily with CDBG funds. Davis-Bacon applies to all aspects of this project.

FALSE - DB is not applicable to the demolition work because there is no immediate plan to reconstruct. DB is not applicable to the installation of on-site septic systems for 4 households because they are owner-occupied single family. DB is not applicable to the rehabilitation because these units are owner occupied. DB Heavy rates are applicable to the water and drainage improvements because the county will be contracting work separately and the utility will continue to own and operate after construction is completed.

18) A city project will provide \$50,000 of CDBG funds for infrastructure improvements to a developer who plans to build 33 single-family homes which will be sold to low-moderate income homebuyers. Prior to construction starting, the city plans to transfer ownership of the land to the developer who will contract with one general contractor to perform all construction work (infrastructure and new housing). DB does not apply to this project as this is a single family development.

TRUE - DB would not be applicable to the entire project as the improvements are designed and intended to serve the new construction, will be contracted for by the same entity contracting the homes, and the contracting entity (developer) controls the site.

19) A county agency will purchase and install street lights. Major electrical upgrades will be necessary. County workers will perform all electrical work and they will install the street lights. This work is exempt from DB requirements.

TRUE - Work is exempt as county workers will be doing the work.

20) A county agency will purchase and install street lights. Major electrical upgrades will be necessary. The electrical upgrades will cost \$100,000 and will be contracted out. The contractor will also install the street lights when electrical work is completed. The county will use \$100,000 in CDBG funds to purchase the street lights. DB does not apply to this project.

TRUE - CDBG funds are being used for a soft cost and construction work is being contracted out separately.

21) A town will replace sewer lines (\$160,000), resurface streets (\$175,000), and improve drainage (\$150,000). Five severely deteriorated owner-occupied homes will be rehabilitated and contracted by the town. Also, five investor-owned units will be acquired by the town. The lots will be reconfigured and then donated to a redevelopment association that has committed \$250,000 in financing in private and federal funds to construct 3 LMI affordable homes. The redevelopment associated will be the contracting entity for the construction of housing. DB applies only to the water/sewer/street improvement portion of this project (Heavy rates).

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TRUE - DB does not apply to the 5 rehabilitation single-family homes. DB does not apply to the 3 new homes. DB is applicable to the sewer, street, and drainage improvements as the town's public utility company will be the contracting entity and force account workers will not be used. A highway decision is applicable to the street work (35% or the total cost) and a heavy decision is applicable to the water/sewer work. One wage decision could be used if the street or water/sewer work is incidental to the other work being done (e.g. if the street repairs were 20% of or less of the total cost, a heavy decision could be used for all work).

ADDITIONAL RESOURCES

For further guidance, please review CDBG's Forms and Resources online at:

<http://www.diversifynevada.com/programs-resources/rural-community-development/forms-and-reference-materials-for-grantees>

If you have questions or need additional information, please contact the CDBG Office at (775) 687-9900.

Labor Complaints

United States Department of Labor

<http://www.dol.gov/wecanhelp/howtofilecomplaint.htm>

Required Posters for Grantee Use

The below posters and notices are required to be posted conspicuously on the job site.

Equal Opportunity is the Law- English

<http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>

Equal Opportunity is the Law- Spanish

<http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeosp.pdf>

Federal Minimum Wage Poster- English

<http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>

<http://www.dol.gov/whd/regs/compliance/posters/minwage.pdf>

Federal Minimum Wage Poster- Spanish

<http://www.dol.gov/whd/regs/compliance/posters/flspan.htm>

<http://www.dol.gov/whd/regs/compliance/posters/minwagesp.pdf>

US DOL Employee Rights Under the Davis-Bacon Act Poster- English (WH-1321)

<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

US DOL Employee Rights Under the Davis-Bacon Act Poster- Spanish (WH-1321)

<http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>

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US DOL Occupational Safety & Health Administration Posters by State
http://www.osha.gov/dcsp/osp/states_posters.html

US DOL Wage and Hour Division (WHD) Posters
<http://www.dol.gov/whd/resources/posters.htm>

HUD Federal Labor Standards Provisions

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf

Required Forms for Grantee Use

US DOL Weekly Payroll Form (WH-347) - Recommended form or use equivalent
<http://www.dol.gov/whd/forms/wh347.pdf>

US DOL Instructions for Completing from WH-347
<http://www.dol.gov/whd/forms/wh347instr.htm>

Other Forms/Guidance

HUD OLR Handbook 1344.1 Rev 2: Federal Labor Standards Requirements in Housing and Urban Development Programs (Updated February 2012):
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441

Nevada Department of Business & Labor: Office of the Labor Commissioner:
<http://www.laborcommissioner.com/>

U.S. Equal Employment Opportunity Commission (EEOC):
www.EEOC.gov