

CHAPTER 10 - CONSTRUCTION & LABOR STANDARDS

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Statutory and Regulatory Provisions

Federal (Davis-Bacon) wage requirements are made applicable to the HOME program by Section 286 of the National Affordable Housing Act of 1990 which provides, in part as follows:

Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of affordable housing involved,...

HUD regulations (24 CFR 92.354) paraphrase the statutory provision and clarify that the contract for construction must contain these wage provisions if HOME funds are used for any project costs, including construction or non-construction costs, for housing with 12 or more HOME-assisted units.

The regulations further explain that a construction contract that includes a total of 12 or more HOME-assisted units is covered by Davis-Bacon requirements even if the contract covers more than one HOME “project” and prohibits arranging multiple construction contracts within a single

project for the purpose of avoiding Davis-Bacon coverage. Once triggered, the wage provisions apply to the construction of the entire project – HOME-assisted and non-assisted portions, alike.

Unit Threshold

The Davis-Bacon “trigger” relates to the number of HOME-assisted units contained in a construction contract. It is important to recognize that the two factors are:

The number of HOME units – there may be units that are not HOME-assisted in the contract

The scope of the construction contract – not the “project.”

The Labor Laws

Every construction (rehabilitation or new) contract with 12 or more HOME-assisted units is required to comply with the following federal labor standards (note that construction projects with less than 12 HOME-assisted units are still subject to the Fair Labor Standards Act:

Davis-Bacon Act (40 U.S.C. 276(A)-(A)-5)

Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed.

Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 333)

Provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for liquidated damages where violations occur. This act also addresses safe and healthy working conditions.

Copeland Act (Anti-Kickback Act) (40 U.S.C. 276c)

The Copeland Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment.

Fair Labor Standards Act of 1938, as Amended, (29 U.S.C. 102, et. seq.)

This Act provides for minimum wages for construction workers, overtime pay (forty-hour week), recordkeeping and child labor standards.

Labor Standards Procedures Overview

Grantees must develop a compliance and enforcement program that ensures all applicable labor standards requirements are met. In many instances the grantee, the grant administrator, and the engineer may work together to ensure compliance with Davis-Bacon and Related Acts.

The grantee must designate someone as the labor standards compliance officer with the overall responsibility to coordinate and ensure compliance with all appropriate labor standards regulations and maintenance of an accurate filing system. The final responsibility for compliance rests with the grantee.

The grantee must secure applicable wage rate decisions, include all applicable wage rate and labor standards provisions in the bid specifications and contract documents, and monitor contractor compliance. Major activities are summarized in Tasks 3 through 6 in the most typical sequence of occurrence.

To properly organize construction and labor standards documents, the grantee should establish a filing system that contains the following (as they become available):

1. Preliminary design and cost estimates.
2. Final design and cost estimates.
3. Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids.
4. Wage decision(s) for project.
5. Construction bid package.
6. Approval of bid documents by authorities having jurisdiction over the project.
7. Proof of publication advertising bids. This file may also include any letters utilized to specifically solicit for minority/women contractor participation.
8. Bid opening minutes, bid tabulations.
9. Wage decision verification **ten days prior** to bid opening.
10. Verification of contractor eligibility.
11. Written recommendation for award of contract.
12. Executed construction contract(s).
13. Pre-construction conference minutes or evidence of meeting with contractor.
14. Notification to the Department of contract award.
15. Contractor/subcontractor weekly payrolls and evidence of review, (a copy of the first two (2) payrolls must be submitted to the Department).
16. Employee interview forms and evidence of review.
17. Verification of job site posting.
18. Other related correspondence.

Secure Wage Decision

The grantee may obtain the wage decision online at www.wdol.gov. When you visit the website you will need to click on “Selecting DBA WDs.” You will then need to enter your state, county and construction type – Building, Residential (most HOME projects fall in this category), Highway, or Heavy.

The grantee will need to download the “Construction Packet” from http://www.neded.org/files/crd/2009/CDBG/Construction_Compliance_Packet_After_Award_May_2009.doc to find items that should be included in the Bid Document.

Items which are included in the Construction Packet include: “Contractors Guide to Davis-Bacon Wage Requirements and Certified Payroll Reports,” Contract Work Hours and Safety Act (CWHSSA), Payroll form (WH-347), Employee Interview Form (HUD-11), eleven (11) posters (listed in the Construction Packet) that must be displayed with the wage decision for the duration of the project in a conspicuous place accessible to all the workers, and LSE-7 – Notice of Contract Award.

The packet further details the documents that must be sent to the Department for review and record keeping purposes.

The grantee will need to check weekly through the bid opening date to verify the area wage decision is current. If modifications are published prior to bid opening and/or award the grantee must secure modifications and send them as an addendum to all contractors who received the original bid package.

The area wage decision is in effect for the life of the project unless a contract is not awarded within 90 days of the bid open. In that case, a new decision is required.

Federal Provisions for Bid Package

The grantee must develop procedures for securing contractors and monitoring compliance with various Federal Equal Opportunity requirements. The grantee must include all applicable Equal Opportunity language, other related HOME and local terms, conditions, and procedures in the bid specifications and contract documents, obtain required documentation, and monitor compliance. These activities are to be incorporated into the contracting flow summarized below. These terms and conditions are included in the contract & consulting attachments. These conditions must be incorporated into the bid package and awarded contract.

Bonding and Insurance Requirements Clause: Federal bonding requirements apply to contracts in excess of \$100,000. Smaller contracts must comply only with local bonding requirements.

- Flood Insurance, if applicable.
- Bonding and Insurance. (Attachment 1)
- Title VI of the Civil Rights Act of 1964 Clause. (Attachment 3)
- Age Discrimination Act of 1975, as Amended Clause. (Attachment 3)
- Section 504 of the Rehabilitation Act of 1973, as Amended Clause. (Attachment 3)
- Section 3 of the HUD Act of 1968, as amended Clause. (Attachment 3)
- Section 109 of Title I of the Housing and Community Development Act of 1974, as Amended Clause (Attachment 3)
- Federal Executive Order 11246. (Attachment 4)
- Clean Air/Water Clause. (Attachment 6)
- Access to and Maintenance of Records Clause. (Attachment 5)
- Conflict of Interest Clause. (Attachment 5)
- Applicable Wage Decision(s).
- Federal Labor Clauses (Attachment 12).
- Federal Labor Standards Provisions (HUD-4010)

Attorney Review

The Department recommends the bid package be reviewed in its entirety by the grantee's attorney to insure compliance with applicable state and local law.

Verification of Wage Decision

Ten days prior to bid opening date, the grantee must check online at www.wdol.gov to determine if there have been any modifications or replacement of the area wage decision previously issued. The grantee must make a note in the file that includes the wage decision number, modification number, date of the decision, date checked, and the name of the person checking decision. If the wage decision has changed, print out, include the new wage decision in the Bid Packet, and file the current wage decision. **This is important because if the wage decision has changed and the grantee has not checked for updates and notified prospective bidders (if applicable), the grantee is liable for any difference in increased wages for the project.**

Bid Amendments

If bid documents are amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. The grantee must include the wage decision in the bid document. If modifications are published prior to bid opening, the grantee must secure modifications and send them as an addendum to all contractors who received the original bid package.

Verifying Contractor

Prior to award of the contract, the grantee must check to make sure the proposed prime contractor is not on federal lists of debarred, suspended or ineligible contractors. The grantee must go to <http://epls.arnet.gov/> to verify the contractor is not on federal lists of debarred, suspended or ineligible contractors. The grantee must print the result of the search and retain the printout in the grantee files.

Contract Award Procedures

The Notice of Contract Award (Form LSE 7) must be sent to the Department within 10 days of award. The Notice of Contract Award includes the project name and location, the applicable wage decision, including verification date and date of the wage determination, the name and address of the business awarded the contract, the contract amount, and the name of the person identified by the municipality as responsible for labor standards compliance. If there are multiple contracts with the grantee, LSE 7 should be submitted for each contractor.

Meet with Contractor

Prior to the start of construction, the grantee should meet with the principal contractor and all available subcontractors to instruct them on their responsibilities under the Labor Standards provisions (including submission of weekly payrolls) as well as the grantees role in monitoring compliance (including employee interviews); to obtain any outstanding documentation; and to provide the contractor with posters for the site (see Construction Packet for list of posters required) and a copy of the wage decision for posting.

This meeting can take place at a pre-construction conference or any other convenient time. Pertinent information as to the items discussed and attendees should be documented and kept in the grantee files. Attachment 10 is an example of the items to be discussed at this meeting.

Additional Wage Decision Classifications

The pre-construction conference or similar meeting is an opportune time to review the wage decision to see if any additional classifications will be required. If any class of laborer or mechanic that is not listed in the wage decision is to be employed, you must submit an additional request to the Department after contract award that such laborer or mechanic be conformed to the wage decision.

Attachment 11 is an example of the information to be submitted to DED if a wage determination lacks a classification of worker to be employed.

Your request must include:

1. A letter from the awarded contractor stating what is paid hourly (wages and itemized bona-fide fringe benefits) to the employees in the needed classifications (this work cannot be performed in any classification in the wage determination).
2. A description of the work to be performed for each wage classification
3. A statement on whether they are union or non-union employees.
4. Documentation that the interested parties, including the employees or authorized representatives and the contractors, agree on the proposed classification and wage rate. Attachment 11 and HUD's Form 4230a should both be submitted to the Department.

Upon receiving the letter from the awarded contractor, the Department will issue a temporary wage. Once the Department receives confirmation from the DOL on the wage rate, the Department will contact the grantee with DOL's decision.

Wage Rate Exceptions

Apprentices and trainees may work at less than prevailing wage rates only if they are registered in a bona fide apprenticeship program, which has been approved by the United States Department of Labor (DOL).

Notice to Proceed

Following execution of the contract documents and completion of the preconstruction conference, the grantee will issue a Notice to Proceed to each prime contractor to begin the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with these sections of the contract documents.

Payroll Verification

Once construction is underway, the grantee must obtain copies of all general contractor and subcontractor weekly payrolls, accompanied by the Statement of Compliance (form WH-348), and check them against the wage decision. The contractor should submit these within seven working days of the end date on the payroll form.

The payrolls should be examined upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payrolls should be initialed for verification of review.

Items for review include:

- Correct classification of workers.
- A comparison between the classification and the wage decision to determine whether the rate of pay is at least equal to the rate required by the decision.
- 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; a review of deductions for any non-permissible deductions; and that the statement of compliance has been signed by the owner or an officer of the construction firm.

Payroll Verification Submitted to DED

The grantee must submit a copy of the first 2 (two) payrolls, from each contractor to the Department. Any discrepancies must be reported to the contractor and the Department along with steps taken or being taken to resolve discrepancies.

On-Site Visit/Interviews

Site visits should be made to confirm that posters and the correct wage decision are posted at the construction site in clear view of all employees throughout the duration of the construction project. The required posters should all have been downloaded and on display.

The grantee must also conduct on-site interviews of construction workers using form HUD-11, Record of Employee Interview (the link to this form is located in the appendix). Grantees may choose to target on-site interviews to projects, contracts, and/or employers where violations are suspected and the interview data can be most useful.

Targeting may mean that no interviews are conducted on certain contracts where remote monitoring (such a payroll reviews) indicates full compliance so that more interviews may be conducted where problems are indicated. However, conducting a minimum of 3 visits and interviews throughout each project, regardless of any concerns, is encouraged. For more information about Record of Employee Interview please view the information at <http://www.hud.gov/offices/olr/streamline.cfm>.

All information received from the on-site interviews must be compared to the information contained in the applicable contractor's payrolls and correction of any discrepancies undertaken immediately. The reviewer must sign and date the interview form for proper verification of review. At completion of the project, the grantee must also prepare and submit to the Department a Final Wage Compliance Report (LSE 9).

Construction Management

During construction, the grantee is also responsible for construction management. This may be done by the architect/engineer, and if so, should be included in the scope of services identified in the professional services contract. Construction management must include inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications and quantity and quality control. Written inspection reports must accompany the contractor's requests for partial payment.

- General Supervision must include monitoring construction to alert the grantee as to need for adjustments in design as dictated by actual field conditions and the preparation of contract amendments affecting alignment, detail or dimensions shown on drawings must include revised drawings.
- Quality Control must include quality tests as necessary to verify conformance with technical specifications concerning minimum quality requirements.
- Quantity Control must include verification of in-place quantities and other records reflecting the as-built facility.
- Certification of Pay Estimates - Inspection reports, copies of field measurement notes, and test results used to verify contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.
- General construction management may include other responsibilities, include but not limited to providing horizontal and vertical control in the form of benchmarks and base lines to be used by the contractor in staking the construction, review and approval of shop drawings, and project coordination.

Payment Procedures

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

Upon receipt of Certificates for Partial Payment and necessary documentation, the grantee must check Equal Opportunity and Labor Standards compliance files to insure that all payrolls have been received and checked and any necessary restitution paid and that Employee Interviews (form HUD-11) have been conducted and all discrepancies corrected. The grantee may then pay the contractor the amount requested or up to 90% of the amount requested, depending on contract (the 10% would be retained until final completion and acceptance of the work).

Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders are generally permissible under state law. The cumulative cost of all such orders should not exceed 25 percent of the original contract price and these changes are not to constitute a major alteration of the original scope of work.

Each change order must be accompanied by a supporting statement which describes why the change is necessary, cost estimates, and any needed plans and specifications. The grantee must approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum.

Acceptance of Work

Before final payment approval, the contractor must complete the conditions in the bid contracts. The contractor may request an acceptance of work from the Grantee that indicates the work has

been completed according to contract. The grantee must place the acceptance of work form in the contract file. Change orders and receipts for project payment must be filed. The files must be reviewed by the grantee for completeness before the acceptance of work form is approved. The contractor must file an as-built plan with the grantee to receive project approval. The grantee can then issue an acceptance of work and final payment less any funds retained after the contractor has completed the project and files are complete.

The contractor should file the acceptance of work from the grantee at the designated location. The grantee should require the contractor to submit lien waivers from all subcontractors, if any. The lien waivers must be submitted from the materials and labor subcontractors to the contractor prior to filing an acceptance of work form.

The subcontractor lien waivers must be placed in the grantee's contract files after the filing of the acceptance and upon submission of a clean lien certificate by the contractor, the grantee may release the funds retained to the contractor. If any claims or liens remain, the grantee must take appropriate action for disposition of funds retained and all claims against the bonds in accordance with state law.

Index of Hyperlinks

HUD Forms

Link

HUD Labor Relations <http://www.hud.gov/offices/olr/olrform.cfm>
HUD 4010-Federal Labor Standards Provisions (Needs to be in Construction Contract)
HUD 11-Record of Employee Interview (English/Spanish)
HUD 4230-A-Report of Additional Classification & Wage Rates
WH-347-Payroll Report

DOL Forms

Link

DOL Forms by Form Number <http://www.dol.gov/library/forms/FormsByNum.asp>
WH-347-Payroll Report

DOL/HUD Documentation

Link

Making Davis-Bacon Work (Contractor's Guide)
http://www.hudclips.org/sub_nonhud/cgi/pdfforms/dbacont.pdf
Contract Work Hours and Safety Standards Act <http://www.dol.gov/esa/regs/statutes/whd/safe01.pdf>

Posters

Link

Equal Employment Opportunity (EEO) is The Law
EEO (English) <http://www.dol.gov/esa/regs/compliance/posters/pdf/7975epos.pdf>
EEO (Instructions) <http://www.dol.gov/esa/regs/compliance/posters/eeo.htm>
EEO (Spanish) <http://www.dol.gov/esa/regs/compliance/posters/pdf/eeosp.pdf>
EEO (Spanish Instructions) <http://www.dol.gov/esa/regs/compliance/posters/eeospan.htm>

You Have a Right to a Safe and Healthful Workplace

OSHA 3165 (English) <http://www.osha-slc.gov/Publications/osha3165.pdf>
OSHA 3165 (Instructions) <http://www.osha.gov/Publications/poster.html>
OSHA 3165 (Spanish) <http://www.osha.gov/Publications/osha3167.pdf>
OSHA 3165 (Spanish Instructions) <http://www.osha.gov/Publications/poster2.html>

Notice To All Employees

WH-1321 <http://www.dol.gov/esa/regs/compliance/posters/pdf/fedprojc.pdf>
WH-1321 (Instructions) <http://www.dol.gov/esa/regs/compliance/posters/davis.htm>

NDOL Posters <http://www.dol.state.ne.us/nwd/center.cfm?PRICAT=4&SUBCAT=4F&ACTION=posters>
Your Rights Under the Fair Labor Standards Act - Publication #1088 (Federal Minimum Wage - Child Labor)

"Notice" Employee Polygraph Protection Act - Publication #1462

Family Medical Leave Act - Publication #1420

Notice to Employees - (Nebraska Minimum Wage)

Job Safety and Health Poster (LB757)

Equal Employment Opportunity is the Law - (Americans with Disabilities Act included)

Discrimination in Employment, Housing, Public Accommodations is Prohibited by State Law

Job Safety and Health Protection - OSHA Publication #3165

Uniformed Services Employment and Reemployment Rights Act (USERRA)

Unemployment Insurance Advisement of Benefit Rights

3 in 1 State Labor Law Poster

BONDING AND INSURANCE REQUIREMENTS

CODE OF FEDERAL REGULATIONS 24CFR85.36

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold*, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

*fixed at 41 U.S.C. 403(11) (currently set at \$100,000)

CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS

Public Law 88-352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et. seq.) (24 CFR part 1).

The law provides that, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, Et, seq.).

The law provides that, “no person in the United States shall, on the basis of age, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. “

Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794).

“Section 504 provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Section 3 of the Housing and Urban Development Act of 1968, As Amended (12 U.S.C. 1701u). The law provides that, “to the greatest extent feasible, that recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housing residents. Section 3 helps create employment for low-income persons and provides contracting opportunities for businesses that are owned by low-income people or that provide employment to low-income people.”

Section 109 of Title I of the Community and Housing Development Act of 1974 (24 CFR Part 6

“Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.”

**CERTIFICATION OF BIDDER REGARDING SECTION 3 AND
SEGREGATED FACILITIES**

Name of Prime Contractor

Project Name and Number

The undersigned hereby certifies that:

- (a) Section 3 provisions are included in the Contract.**
- (b) A written Section 3 plan was prepared and submitted as part of the bidding proceedings (if bid equals or exceeds \$10,000).**
- (c) No segregated facilities will be maintained.**

Name & Title of Signer (Print or Type)

Signature

Date

CONTRACTOR

Section 3 Plan

_____ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lowest income residents and businesses within the Village/City/County of _____

- A.
- B. To ascertain from the locality’s HOME program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- C. To attempt to recruit from within the city the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- D. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- E. *To insert this Section 3 plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- F. *To insure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- G. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- H. To insure that all appropriated project area business concerns are notified of pending subcontractual opportunities.
- I. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.
- J. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 plan.

K. _____

**Loans, grants, contracts and subsidies for less than \$10,000 will be exempt.*

L.

SPECIAL EQUAL OPPORTUNITY PROVISIONS

A. Activities and Contracts Not Subject to Executive Order 11246, As Amended
(Applicable to Federally assisted construction contracts and related subcontracts
\$10,000 and under)

During the performance of this contract, the contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of the nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (Contract/subcontracts above \$10,000)

1. SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive

ATTACHMENT 4

consideration for employment without regard to race, color, religion, sex or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the [Contract Compliance Officer], advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the [Department] and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor *will* take such action with respect to any subcontract or purchase order as may be directed by the [Department and the] Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction [by the Department], the contractor may request the United States to enter into such litigation to protect the interests of the United States [*italics added*]."

ACCESS TO AND MAINTENANCE OF RECORDS

The Consultant/Contractor agrees to maintain such records and follow such procedures as may be required under HUD CPD subpart J, 570.502 (paragraph a. 16.) and 24CFR85.42 (paragraphs (b) and (c)) and any such procedures that DED may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant/Contractor or Grantee for a period of three years after the final audit of the Grantee's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Grantee shall request a longer period for record retention.

The Grantee, DED and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultant/Contractor involving transaction to this local program and contract.

Conflict of Interest

From 24CFR85.36, no officer, employee or agent of the Grantee who will participate in the selection, the award, or the administration of this grant, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this Contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department.

CLEAN AIR AND WATER ACTS – REQUIRED CLAUSES

This clause is required in all third party contracts involving projects subject to the Clean Air Act (42 U.S.C. s/s 7401 et seq. (1970)), the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), and the regulation of the Environmental Protection Agency with respect to 40 CFR32 as amended. It should also be mentioned in the bid document.

During the performance of this contract, the CONTRACTOR agrees as follows:

- (1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 48 CFR 9.40 and 40CFR32.20.**
- (2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and Section 308 of the Clean Water Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.**
- (3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.**
- (4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.**

Preconstruction Conference
Labor Standards Regulations Information

Project Name:

Project Location:

CDBG Grant Number:

Date:

The following Labor Standards requirements were discussed and reviewed with _____ representing _____ who will undertake this project.

- ◆ Prevailing wages as set forth in the Davis-Bacon Act must be paid on this project. Required wage rates are contained in Wage Determination _____ Mod# _____ Date _____
- ◆
- ◆ Overtime provisions as listed in the Contract Work Hours and Safety Standards Act must be followed. Time and a half must be paid to any worker employed in excess of 40 hours in one week.
- ◆
- ◆ The Wage Determination and Wage Poster must be prominently displayed on the job site for the duration of the construction.
- ◆
- ◆ Employees must be paid on a weekly basis.
- ◆
- ◆ Payrolls covering all workers on the project must be submitted to _____ on a weekly basis, from the time the work begins until it is completed, and no later than seven days following completion of the workweek. No payroll is needed if no work is performed, but payrolls must be numbered with the last one marked "Final".
- ◆

ATTACHMENT 10

- ◆ To ensure cooperation, employees are to be informed that onsite interviews will be conducted by the Labor Standards Compliance Officer, _____.
- ◆
- ◆ Proper certification from the U.S. Department of Labor, Bureau of Apprenticeship and Training, will be required whenever apprentices are employed.
- ◆
- ◆ Withholding of payments may occur if all applicable provisions are not followed.
- ◆
- ◆ Underpaid workers must be paid proper wages through restitution.
- ◆
- ◆ Liquidated damages \$10/day may be assessed for each violation of the Contract Work Hours and Safety Standards Act.
- ◆
- ◆ Federal Labor Standards provisions apply to the general contractor and to all subcontractors on the project. The prime contractor is responsible for payment of employees of the subcontractors in compliance with labor standards provisions.
- ◆
- ◆ Wage restitution may be due to employees for failure to observe the proper ratio of journeymen to apprentices, underpayment of employees, or for allowing apprentices to work alone.
- ◆
- ◆ A listing of contractors to be utilized on this project must be provided to _____. Any debarred, suspended or ineligible contractors may not be used.
- ◆ The Labor Standards Compliance Officer must be informed of the start and end of construction dates on the project.
- ◆
- ◆ Only trades indicated in the Waged determination can be utilized on the project. Additional classifications will be needed for any non-listed trades.
- ◆
- ◆ Davis-Bacon language (HUD form 4010) must be included in all project contracts, lower tier contracts included.
- ◆
- ◆ The Labor Standards Compliance Officer needs to review the prime contract for inclusion of Labor Standards Provisions.

The following material was provided to the Developer/General Contractor on this project

Wage Determination # NE _____ Mod# _____ Dated _____

Posters to be posed at the job site

Payroll form

Federal Labor Standards Provisions HUD form 4010

Sample Payrolls

It is acknowledged that the Labor Standards Regulations information mentioned above was discussed and the related documents were transmitted to _____ of _____.

Pre-Award Official

Developer/Contractor
Title _____

Request Additional Wage Determination Classification Example

Please type or print in all areas except the signatures.

Information to include

| | | | |
|--------------------------------|--|---|--------------------------------|
| <i>CDBG Project No.</i> | <i>Name of Grantee (Village/City/County)</i> | <i>Location of Project (City, County and State)</i> | |
| <i>Contract Award Date</i> | <i>Wage Determination No.</i> | <i>Wage Modification No.</i> | <i>Wage Determination Date</i> |
| <i>Sub-contractor Name</i> | <i>Sub-contractor Address</i> | <i>Sub-contractor City, State, Zip</i> | |
| <i>Primary Contractor Name</i> | <i>Primary Contractor Address</i> | <i>Primary Contractor City, State, Zip</i> | |

Parts (1) through (3) of information requested.

_____ am currently paying _____ per hour to _____
(Name of Contractor) *(Wage Rate)* *(Employee(s) Name)*

in the following _____ In addition I am paying _____ in bona-fide
(Wage Classification) *(Amount)*

fringe benefits (per hour). These fringe benefits include _____
(Amount/Fringe Per Hour), (Amount/Fringe Per Hour), etc.

_____ does _____ This employee is a(n)
(Employee Name) *(Description Of Work Performed)*

_____ member.
(Non/Union)

| | |
|---------------------------|----------------------------|
| Contractor Name (Printed) | Contractor Title (Printed) |
| Contractor Signature | Contractor Title |
| | Date Signed |

Part (4) of requested information.

I, _____ agree to the above written information stating my wage classification to be
(Employee Name)

_____ at the wage rate of _____ in addition I am receiving
(Wage Classification) *(Wage Rate)*

the following bona fide benefits per hour _____
(Amount/Fringe Per Hour), (Amount/Fringe Per Hour), etc.

| | | | |
|--------------------|------|----------------------|------|
| Employee Signature | Date | Contractor Signature | Date |
|--------------------|------|----------------------|------|

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REPORT OF ADDITIONAL CLASSIFICATION AND RATE**

HUD FORM 4230A

OMB Approval Number 2501-0011
(Exp. 09/30/2006)

1. FROM (name and address of requesting agency)
Merci Suarez
 Nebraska Department of Economic Development
 PO Box 94666
 Lincoln, NE 68509-4666

2. PROJECT NAME AND NUMBER

3. LOCATION OF PROJECT (City, County and State)

4. BRIEF DESCRIPTION OF PROJECT

5. CHARACTER OF CONSTRUCTION
 Building Residential
 Heavy Other (specify)
 Highway

6. WAGE DECISION NO. (include modification number, if any)
 COPY ATTACHED

7. WAGE DECISION EFFECTIVE DATE

| 8. WORK CLASSIFICATION(S) | HOURLY WAGE RATES | |
|---------------------------|-------------------|----------------------------|
| | BASIC WAGE | FRINGE BENEFIT(S) (if any) |
| | | |
| | | |
| | | |
| | | |
| | | |

| 9. PRIME CONTRACTOR (name, address) | 10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address) | |
|-------------------------------------|---|--|
| | | |
| | | |
| | | |

9. PRIME CONTRACTOR (name, address)

10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)

- Check All That Apply:**
- The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.
 - The proposed classification is utilized in the area by the construction industry.
 - The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.
 - The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).
 - Supporting documentation attached, including applicable wage decision.

- Check One:**
- Approved, meets all criteria. DOL confirmation requested.**
 - One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.**

Merci Suarez

Agency Representative
(Typed name and signature)

_____ *Date*

(402) 471-6280

Phone Number

FOR HUD USE ONLY
LR2000:
Log in:
Log out:

information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

Instructions

General:

Contractors/Employers: Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits, that are proposed.

Local Agency Staff: Complete items 2 through 10. Submit one copy of this form to the responsible HUD Labor Relations Office with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer's request must be made in writing and must be signed.)

For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.

Enter the name and number of the project or contract involved.

Enter the location of the project involved: city, county and state.

Describe the construction involved, e.g., new construction or rehabilitation, number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3 – 4-story buildings; 120 units.

Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.

Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.

Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)

Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.

Self-explanatory.

If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

Remainder of Form: HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer's request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in "checklist" form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, *and* a cover letter explaining how the employer's request failed to meet one or more of the criteria.

Submission of Report

Completed forms shall be sent to: Branch of Construction Wage Determinations, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

FEDERAL LABOR CLAUSES

The Davis-Bacon Act (DBA)

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. Section 109 of the Housing and Community Development Act of 1974, As Amended.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

NOTICE OF CONTRACT AWARD

Please submit this completed notice within 10 days after contract award to:

MERCI SUAREZ, Labor Standards Specialist
Nebraska Department of Economic Development
Community and Rural Development Division
PO Box 94666
Lincoln, Nebraska 68509-4666

Telephone: (402) 471-6280 or (800) 426-6505
 Fax: (402) 471-3778
 email: merci.suarez@nebraska.gov

| | | |
|--|--------------------------|-----------------------------------|
| 1. CDBG Grant No: | | |
| 2. City/Village: | County: | State: |
| 3. Federal Wage Determination Number: | Mod#: | |
| 4. Verification Date/Date of Federal Wage Determination (publication date): | Verification Date | Date of Wage Determination |
| 5. Bid Opening Date: | | |
| 6. Contract Award Date: | | |
| 7. Estimated Construction Start Date: | | |
| 8. Contract Amount: | | |
| 9. Name, Address, City, State, and Zip of General Contractor: | | |
| 10. Description of Work: | | |
| 11. Labor Standards Designee | | |
| | | TELEPHONE NUMBER: |
| ADDRESS: | | EMAIL: |
| (SIGNATURE) | | DATE: |

Individuals who are hearing and/or speech impaired and have a TDD, may contact the department through the Statewide Relay System by calling 711 (in-state), (800) 833-7352 (TDD), or (800) 833-0902 (voice). The relay operator should be asked to call DED at (800) 426-6505, or (402) 471-3111.

FINAL WAGE COMPLIANCE REPORT

Community Development Block Grant (CDBG) Nebraska Department of Economic Development

| | |
|--------------------|--|
| Grantee: _____ | Project Completion Date: _____ |
| CDBG Grant: _____ | U.S. DOL Wage Rate Determination No: _____ |
| Program Rep: _____ | |

1 While you or your representative were reviewing the contractor's weekly payrolls, were any laborers or mechanics paid less than the minimum wage rate plus fringe benefits as specified in the Secretary of Labor's Wage Determination No. _____ that applied to this project? No Yes

2 If yes, provide the following information:

a. Total Amount of Restitution Paid (difference between what was first paid and what was required to be paid): \$ _____

b. Method of Restitution: _____ Paid by Contractor

_____ Paid by City with Funds Withheld From Payment to Contractor

| <u>Contractor or Subcontractor Name</u> | <u>Name of Affected Employees</u> | <u>Amount of Restitution Paid to Employee</u> | <u>Nature of Violation Leading to Restitution</u> |
|---|-----------------------------------|---|---|
|---|-----------------------------------|---|---|

Signed

Title

Date