

## **B. PUBLIC FACILITY IMPROVEMENTS**

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## **B. PUBLIC FACILITY IMPROVEMENTS**

### **Task B-1: Labor Compliance**

#### **Regulations/Requirements**

- **Davis-Bacon and Related Acts (40. U.S.C. 276(a)-276(a)-7)** The Davis-Bacon Act (DBA), enacted by the United States Congress, covers contracts that are directly federally funded. After the DBA was enacted, Congress extended the reach of the Davis-Bacon Act provisions by passing Davis-Bacon Related Acts (DBRA), which covers contracts that are indirectly federally financed (or assisted) in whole or in part. The Louisiana Community Development Block Grant (LCDBG) program is funded through the U. S. Department of Housing and Urban Development (HUD). Thus, most of the LCDBG program's construction contracts are indirectly federally funded and subject to DBRA. DBA and DBRA are basically the same in substance and purpose. This Grantee Handbook will often use the following terms interchangeably: Davis-Bacon, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

Davis Bacon requires payment of locally prevailing wages and fringe benefits to laborers and mechanics for on-site construction, alteration, or repair on federally financed projects having contracts in excess of \$2,000. Locally prevailing wages are determined by the U.S. Department of Labor and made available to the public as "wage decisions." A Contractor(s) on an LCDBG project covered by Davis-Bacon must meet, at a minimum, the wage requirements set forth in the wage decision(s) applicable to the project.

- **Copeland "Anti-Kickback" Act (40 U.S.C. 276c)** The Copeland Act applies to contracts receiving federal financing (assistance) that are subject to Davis-Bacon requirements. The Copeland Act requires weekly payrolls, Statements of Compliance and that deductions from workers' pay be permissible.
- **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** CWHSSA, (pronounced kwas-sa), applies to federally financed (in whole or in part) contracts over \$100,000 and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of forty hours weekly.
- **Louisiana Law** Some issues are not addressed in federal law but will be applicable to LCDBG projects under state law. In cases where state law is more stringent than federal law, the state law would be applicable.
- **LCDBG Requirements** Numerous procedures and documentation requirements are established by the Office of Community Development (OCD), which is responsible for administering the federally funded LCDBG program.

## Responsibilities

- **Local Government Responsibilities** Each local government is responsible for ensuring compliance with Labor Standards as detailed in this section. The local government's designated Labor Compliance Officer (LCO), often an administrative consultant, is normally delegated the tasks associated with compliance with Labor Standards; however, the local government is ultimately responsible. The form used to designate the local government's Labor Compliance Officer is provided as **Exhibit B-1** and is for the local government's use only. Please do not send this form to the Office of Community Development (OCD).

The local government must establish and maintain an adequate labor standards file(s) as specified in Section One, **Task A-16: Record Keeping and Reporting**.

**Office of Community Development Responsibilities** The Office of Community Development will establish labor standards procedures, provide technical assistance regarding labor questions, conduct compliance reviews, and specify corrective actions.

## Wage Decisions

- **Definition of a Wage Decision** A wage decision is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction. A sample wage decision is provided as **Exhibit B-2**. The minimum pay requirements are referred to as "prevailing wages."
- **Source of Wage Decisions** The responsibility of determining prevailing wages is delegated to the United States Department of Labor (DOL). To meet this responsibility, DOL surveys contractors on construction projects nationwide to determine the prevailing wages for each locality. DOL then issues corresponding wage decisions. The terms "wage decision" and "wage determination" have the same meaning and are used interchangeably.
- **Wage Decision(s) as Part of the Construction Contract** Davis-Bacon requires that each prime contract over \$2,000, which is assisted by federal funds and is for construction, alteration, or repair of public buildings or public works, contain the applicable DOL wage decision(s). Most LCDBG projects, except for housing projects, are covered.

Subcontracts are also subject to Davis-Bacon by a required contractual agreement containing prevailing wage provisions between the prime contractor and subcontractor(s). If any portion of a contract is subject to Davis-Bacon requirements, then all work under that contract, including the work of subcontractors, is subject to Davis-Bacon requirements.

**Types of Wage Decisions**

- **Building** The construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This type includes the construction of such structures, the installation of utilities, and the installation of equipment above and below the grade level, as well as incidental grading and paving. Structures need not be habitable to be considered as building construction.
- **Highway** The construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects that are not incidental to building or heavy construction.
- **Heavy** The construction on projects that cannot be classified as building, residential, or highway.
- **Residential** The construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes incidental items such as site work, parking areas, utilities, streets and sidewalks. LCDBG block grants are not often awarded for the construction activities listed under “Residential” in the following table; therefore, housing projects funded by this office are rarely covered by Davis-Bacon.

<u>The Four Decision Types Based on Nature of Construction</u>			
<b><u>Building</u></b>	<b><u>Highway</u></b>	<b><u>Heavy</u></b>	<b><u>Residential</u></b>
Alteration or addition to buildings	Curbs	Drainage projects	Apartment buildings (4 stories or less)
Fire stations	Concrete pavement including sidewalks	Pumping stations (prefabricated drop-in units—not buildings)	Married student housing
Hotels and motels	Parking lots	Sewers (sanitary, storm, etc.)	Multi-family houses (8 or more)
Power plants	Street reconstruction	Sewer collection	Town or row houses
Prefabricated buildings	Roadbeds	Water storage tanks	Single family houses (8 or more under one contract)
Remodeling, repairing, and renovating buildings	Shoulders	Water and sewage treatment plants (other than buildings)	
Warehouses	Street paving	Water mains	
Water and sewage treatment plants (buildings only)		Water wells	

## Obtaining a Wage Decision

- **Choosing and Downloading the Proper Wage Decision** Multiple factors must be considered to enable the proper choice of wage decision(s). As of April 2009 there were sixteen different current wage decisions posted on the DOL website as available for Louisiana projects. Factors to consider when choosing a wage decision include: (a) decision type—whether building, highway, heavy or residential, (b) project location and (c) special characteristics of the project (such as elevated or ground storage tank), and (d) the possibility that more than one decision may apply. The local government is responsible to ensure that the correct wage decision(s) is chosen and becomes part of the bid document and that the correct wage decision(s) becomes part of the contract between the local government and the prime construction contractor.

If the local government wishes to request guidance from the Office of Community Development regarding the proper wage decision choice, **Exhibit B-3**, “Initial Wage Decision Request,” will facilitate the process. The request of an initial wage decision utilizing the expertise of the labor specialists in the Office of Community Development is an option but is not an LCDBG program requirement. The initial wage rate request guidance may be initiated by phone call, fax, or e-mail. If the request is initiated by phone call, the local government should provide OCD with the information contained in **Exhibit B-3**. If the request is initiated by fax, complete **Exhibit B-3** and fax it to OCD. If the request is initiated by e-mail, complete the form electronically and send it to the Labor Compliance Officer of the Office of Community Development.

The local government must choose and obtain the proper wage decision(s). After the proper initial wage decision has been determined, downloading is the preferred method of obtaining it. DOL provides a website, [www.wdol.gov](http://www.wdol.gov), that has guidance for choosing the proper wage decision and allows downloading of wage decisions. If the local government is unable to download a decision(s), the Labor Compliance Officer of the Office of Community Development should be notified. OCD will assist in the process, and if necessary, send the proper initial wage decision to the local government by fax, e-mail, or U.S. Mail.

## Ten Days

- **The Process of Updating Wage Decisions** DOL gathers information on a year-round basis regarding wage decisions and will often issue an update of a particular wage decision. An update of a wage decision is referred to as a “modification” or “mod.” Less frequently DOL will issue an entire new series of wage decisions, called supersedeas decisions, having a new wage decision number based on a new series year. For example, supersedeas decisions labeled as year 2003 were issued for Louisiana projects on June 13, 2003. Thereafter, for Louisiana, modifications to the 2003 series were issued on various dates until February 9, 2007, when the 2007 series of supersedeas decisions were issued. Regardless of whether a wage decision is updated by modification or by supersedeas decision, it is important to incorporate the proper decision(s) into bid and contract documents.

- **The Effective Wage Decision** DOL does not wish for contract estimators to have to take into consideration the constantly changing rates when preparing bids. DOL allows the wage decision in effect ten days before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be “locked-in” and is also called the “effective” wage decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the “effective” wage decision.
- **Ten Day Responsibility** It is the local government’s responsibility to ensure that the wage decision(s) that is in effect ten days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids prior to bid opening, based on the updated wage decision(s).
- **Ten Day Options** The “ten day call” (see **Exhibit B-4**) is one option that the local government may use to determine whether a wage decision has been updated since the bid package was prepared. The Ten Day Call is simply a telephone call made by the local government to OCD ten days before the bid opening date. If the day on which the call should be made falls on a weekend, then the call should be made on Friday or Monday. OCD will then examine the **www.wdol.gov** website to determine if there have been any updates. If there has been an update, the local government must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package. OCD will enter the optional ten day call into grant records. It is important to remember that Louisiana law requires that any addenda to a bid package be received at least 72 hours prior to the bid opening.

The “ten day search” is another option that the local government may use to determine whether a wage decision has been updated since the bid package was prepared. The local government may search the DOL website at **www.wdol.gov** to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date. It is important to remember that Louisiana law requires that any addenda to a bid package be received at least 72 hours prior to the bid opening. If there has been an update, the local government must obtain (download) the updated wage decision and send a copy by addendum to all who obtained a bid package.

- **Follow-up Ten Day Options** If, after the bid opening, the award of the contract is delayed by more than ninety days, then another call or search will need to be done. If there has been a wage decision update, the low bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.
- **State—45 Days / Davis-Bacon—90 Days** Please be aware that State law requires contracts to be awarded within 45 days of bid opening unless an extension is agreed upon in writing by both parties, whereas the Davis-Bacon requirement to “lock-in” a particular

wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.

- **Failure to Include or Use of Incorrect Wage Decision** Failure to include the effective wage decision in bid documents or contracts will not relieve local governments or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the local government must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract which makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement. The contractor, even if not at fault, may agree to include the proper wage decision retroactively with no additional compensation—especially if the wage rate changes are minor. There is also a possibility that the contractor will require that a change order be made to compensate for an increase in wages due to the observance of the effective wage decision. Such a change order would be an eligible LCDBG cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.

- **Calling Requirement when using the Small Purchase Method** On rare occasions the prime contractor may be procured utilizing the “Small Purchase” method, provided the low bid is expected to be under \$100,000 and the contract award is less than \$100,000. Note that the Small Purchase method does not have a bid opening date. Consequently, a special procedure to ensure compliance with Davis-Bacon has been developed by OCD for the Small Purchase method. First, a bid tabulation date must be established in advance. Bidders must be informed of the day on which bids will be tabulated and of the possibility of a wage decision update. Next, a ten day call or a ten day search must be made ten days before the bid tabulation date.

If there is a wage decision update, all bidders must be notified in a timely manner and documentation of notification must be maintained in grant records. Notification when the Small Purchase method is used is not restricted to addendum only but may be also be done by telephone call, in person, e-mail, fax, or U.S. Mail. This method will ensure that bidders will have nearly ten days to make changes to bids based on an update of the wage decision.

The wage decision authorized at the ten day call or ten day search will remain effective for the duration of the construction project provided that the contract is awarded within ninety days of the bid tabulation date. The effective wage decision(s) must also become part of the construction contract when the Small Purchase method of procurement is used.

**Verification of Wage Decision and Contractor Eligibility** The LCDBG program requires that both the wage decision verification and contractor eligibility verification be obtained after the bid opening and before the award of the construction contract. The Office of Community Development recommends that both verifications be obtained at the same time using one form, the “Verification of Wage Decision and Contractor Eligibility” form, **Exhibit B-5**. For

simplicity, this form will be often referred to as the “Verification” form in this section of the LCDBG Grantee Handbook.

- **Verification of the Wage Decision Choice** Prior to the award of a construction contract to any prime contractor, the local government must obtain verification of the wage decision choice. The fact that an optional ten day call or inquiry was made at an earlier date is not sufficient as verification of the wage decision choice. **Exhibit B-5**, Verification of Wage Decision(s) and Contractor Eligibility, must be completed and faxed, mailed, or e-mailed to the Office of Community Development for review. OCD will review the wage decision that was made part of the bid package, whether by initial inclusion in the bid package or later by addendum, and determine whether it was the proper choice. If the Office of Community Development agrees with the wage decision choice, line 22 of the Verification form will be executed by an OCD staff person and faxed back to the local government. If the Office of Community Development does not agree with the wage decision choice, a Verification form with a signature on line 22 will not be faxed back to the local government until the issue is resolved.

If a determination is made that the wage decision choice was incorrect, the lowest responsive and responsible bidder must agree in writing to incorporate the proper decision as part of the bid documents and resulting construction contract. This agreement is to be obtained in writing prior to the award of the contract. A contract award must not be made before receipt of the Verification form as reviewed and executed by the Office of Community Development.

The authorization of a particular wage decision as evidenced by the OCD staff signature on line 22 of the Verification form will expire if the contract is not awarded within 90 days of the bid opening. If more than 90 days transpires between the bid opening and contract award, the local government is responsible to perform a follow-up ten day call or ten day search to determine the effective wage decision. In such a case, the local government must ensure that the wage decision in effect at the date of the contract award is made a part of the contract between the low-bidder and the local government. A further Verification form, in addition to the original Verification form, will not be required but may be sent with only the portion that pertains to the wage decision completed. Evidence that the effective decision was utilized will be determined by an examination of the construction contract during a monitoring visit. The local government remains responsible to ensure the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

- **Verification of Contractor Eligibility** Prior to the award of a construction contract with a **prime** contractor, the local government must obtain contractor clearance from OCD. To obtain clearance, the local government must complete and send to OCD by fax, mail, or e-mail, a Verification of Wage Decision(s) and Contractor Eligibility form (**Exhibit B-5**) (The “Verification” form). To conduct an eligibility review, OCD will search the following web site: <http://epls.arnet.gov/>. The OCD’s search of the web site only determines whether the contractor is debarred; other types of performance information are

not gathered. After reviewing the wage decision choice(s), OCD will indicate the results of the review on the Verification of Wage Decision(s) and Contractor Eligibility form and fax the reviewed form to the local government via the fax number listed on the face of the form. The local government may also search this internet site to obtain information, but the public availability of this site does not alter the requirement for the local government to obtain clearance through OCD. A contract award must not be made before receipt of the Verification of Wage Decision(s) and Contractor Eligibility form as reviewed and executed by the Office of Community Development. Specifically, the execution of line 23 of the Verification form by a staff person of the Office of Community Development indicates the verification of contractor eligibility.

- **Subcontractor Clearance** OCD does not clear subcontractors. Prime contractors must be made aware that it is their responsibility to verify subcontractor eligibility based on factors such as past performance, a yellow page listing, and proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements. The prime contractor may use the web site listed in the previous paragraph to determine if a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, OCD urges prime contractors to closely scrutinize subcontractors.

The prime contractor should notify the local government's Labor Compliance Officer of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the local government's Labor Compliance Officer to be knowledgeable of the time frame in which to expect the submission of subcontractor payrolls.

If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated and the matter reported to OCD.

- **Clearance of Consulting and Engineering Firms** Consulting and/or engineering firms who are either new to the LCDBG Program or have not performed services associated with an LCDBG Program within the previous five years must also be cleared. For clearance of professional firms, use **Exhibit A-44** of this Handbook.

### **Contract Award, Preconstruction Conference, Additional Classifications**

- **Notice of Contract Award** The local government must submit a completed Notice of Contract Award form to OCD for all prime contracts. This form must be received by OCD within 30 days after award. This form, along with instructions, is provided as **Exhibit B-6**. Along with the Notice of Contract Award the local government must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.
- **Preconstruction Conference** The OCD recommends, but does not require, that the local government hold a preconstruction conference with the prime contractor and all available subcontractors prior to the start of construction, at which time they would be advised of

their responsibilities and obligations concerning labor standards. If the local government should opt to not have a preconstruction conference, then the local government must utilize some method of its own choosing to advise contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The time of preconstruction conference is normally ideal to initiate the additional classification process as discussed in the following paragraphs.

- **Additional Classifications** A wage decision will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the decision will be employed on the project, the contractor must request an additional classification. For instance, a prime contractor installing sewer lines may find that a boring machine operator is needed by one of its subcontractors, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator. Step to obtain an additional classification include:
  - Step One: The prime contractor requests an additional classification and rate by notifying the local government of the additional classification and rate being requested. The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor (or sub) would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received. While the administrative consultant may advise the prime contractor regarding wage rates to be requested, if there is a disagreement, the local government (administrative consultant) should acquiesce by forwarding a report of the classification at the rate requested by the contractor. Note that the prime contractor makes a request while the responsibility of the local government (administrative consultant) is to make a report of the request.
  - Step Two: The local government prepares and sends a Report of Additional Classification and Rate to the Office of Community Development. The Report of Additional Classification and Rate, which is the HUD 4230A form and identified as **Exhibit B-7**, should be used to report the additional classification(s). To obtain a “form-fill” version of HUD 4230A go to [www.hud.gov](http://www.hud.gov) and type the following into the search box: “Report of Additional Classification and Rate.” The search results will make the needed form accessible. The top half of HUD 4230A may be completed by the contractor or the local government based on information from the contractor. The bottom portion of HUD 4230A, beginning where it states “Check All That Apply,” is to be completed by the Office of Community Development. This form and relevant supporting documentation, if any, must be sent (by mail, e-mail, or fax) to the Office of Community Development.

- Step Three: The Office of Community Development will review and complete the “Report” and send the form and supporting documentation, if any, to DOL.
- Step Four: DOL will respond by approving the requested rate or specifying a higher rate. DOL will send the Office of Community Development an official response to the contractor’s request.
- Step Five: The Office of Community Development will forward the DOL response to the local government.
- Step Six: The local government will notify the prime contractor of the results of the DOL response. If the request was on behalf of a subcontractor, the prime will pass the DOL response to the subcontractor.
- Step Seven: If the DOL response indicates approval of the requested rate, further action is unnecessary. If the DOL response indicates a rejection of the request and specifies a higher rate, then the higher rate must be paid to all workers at the particular classification retroactive to the first day of work. Restitution is to be paid at the contractor’s expense. Local governments as well as contractors should be aware that the time that may elapse between the request and DOL’s response may be approximately 60 days.  
DOL will respond by approving the requested rate or specifying a higher rate. OCD will send a copy of DOL’s response to the local government, which in turn will make the response known to the contractor. If a higher rate is specified by DOL, restitution, if any, must be paid. Restitution will be at the contractor’s expense. Local governments should be aware that the time that may elapse between the request and the receipt of DOL’s response may be approximately 60 days.
- **Additional Classifications Prior to Hiring or Mobilization** After a contract is awarded, a construction contractor will often know immediately whether additional classification(s) will be needed. In order to expedite the process, it is permissible for a contractor to request additional classifications before mobilization or hiring of workers. The preconstruction conference often provides an ideal time for contractors to request additional classifications and to provide information helpful to the local government in the completion of the Report of Additional Classification form, HUD 4230A.
- **Metal Building Erector as an Additional Classification** Building wage decisions which cover the State of Louisiana do not have the classification of “Metal Building Erector.” This classification is often needed in the construction of fire stations because the “Ironworker” classification, which was designed for work at much higher elevations and in more dangerous conditions, is more expensive than the lower wages paid for a Metal Building Erector. In such cases, Metal Building Erector may be requested as an additional classification. The bid documents for fire stations may call attention to bidders regarding the availability of the additional classification of “Metal Building Erector.” The rates normally requested for Metal Building Erector are more than the Laborer rate and less than the Ironworker rate.

## **Terminology and Procedures of Davis-Bacon**

- **Prevailing Wages** Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by the U.S. Department of Labor in a document called a wage decision.
- **Laborers and Mechanics - Definition** Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that is not normally thought of as a recognized trade. On a wage decision a classification that is not “laborer” is automatically considered as a “mechanic” classification.
- **Contractor’s Guide to Davis-Bacon** The HUD guide book, “A Contractor’s Guide to Prevailing Wage Requirements for Federally Assisted Projects,” is a recommended (but not a required) publication which the local government may wish to distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grant recipients as well as construction contractors and those who prepare contractor payrolls. It provides a brief explanation of issues associated with labor standards and Davis-Bacon in particular. The guide may be downloaded from HUD’s website at [www.hud.gov](http://www.hud.gov). Once at the HUD website, type in “Contractor’s Guide to Davis-Bacon” in the search box. The search results should include the desired publication.
- **Site of Work** The site of work as related to Davis-Bacon is limited to the physical place or places where construction called for in the contract will remain when work has been completed and to adjacent or nearby property used by the contractor which can reasonably be included because of proximity.
- **Cleaning** Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.
- **Demolition** Demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages.
- **Family Members** There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.
- **Supply and Installation** The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. If a supply contract not otherwise covered requires the supplier to install the product, the installation portion of the contract is

subject to prevailing wage requirements except when the installation involves only minor construction activity. For example, installation of window shades or draperies would not require Davis-Bacon wage rates; however, installation of an elevator or boiler would.

- **Precutting and Prefabrication** Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.
- **Items to be Posted at the Job Site** The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as **Exhibit B-8**.

Additionally, the grantee must see that the posters "Your Rights Under the Fair Labor Standards Act," "Notice to All Employees," and "Equal Opportunity is the Law" are posted at the job site. To verify posting, **Exhibit B-9** may be used. Posters are available as **Exhibit B-10** or may be downloaded from the internet at

**[www.dol.gov/osbp/sbrefa/poster/main.htm](http://www.dol.gov/osbp/sbrefa/poster/main.htm)**

**Employee Interviews** During the course of construction, the local government must conduct interviews of workers to determine payroll accuracy and compliance with Davis-Bacon. Interviews should be recorded on the "Record of Employee Interview," form HUD-11, **Exhibit B-11**.

- **Minimum Interview Requirements** Employees of the following contractors must be interviewed:
  - All prime contractors
  - Subcontractors whose contract award is \$100,000 or more
  - Any subcontractor where there are a large number of payroll problems

One interview session will sometimes be sufficient to meet minimum interview requirements for the above listed contractors. When an interview session is conducted, interviews of the employees of other subcontractors, not listed above must be conducted if they are on the jobsite on the day of the trip.

OCD has determined that interviews must be conducted for at least 50% of the laborers and at least one worker of each of the remaining classifications present on the jobsite on the day of the interviews. Additional interviews that exceed minimum requirements that the local government deems necessary to ensure compliance with Davis-Bacon are also required.

- **Place of Interview** Workers currently employed may be interviewed during working hours on the job provided that the interview can be properly and privately conducted on

the premises. Care must be taken to arrange the session at a time convenient to the employer and employees. Interviews may also be conducted at other public places. Employees and former employees may also be interviewed by mail. An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview. The remaining items on the Record of Employee Interview form should be completed by the local government with items 1 and 2 to be completed before initial mailing and items 13 through 17 completed after the employee returns the document by mail. In off-site interviews or interviews by mail the amount of interviews required must be similar to the estimated amount that would have been obtained during an on-site session.

- **Initiating the Person to Person Interview** The interviewer must confirm his/her identity to the worker. He/she must explain that the project is being constructed with federal assistance, which requires that workers be properly paid, and that the purpose of the interview is to determine whether the required wages are being paid. If a worker does not want to give particular information, the interviewer should not insist.
- **Using the Interview Information** After completing the interviews, the information obtained should be compared to the wage decision and payrolls to determine if the workers are classified and being compensated correctly. If necessary, corrective action should be initiated.
- **Example of Application of the Minimum Interview Requirements**  
A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than \$100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than \$100,000.

Employees of all three primes must be interviewed. Employees of the subcontractor whose contract is \$100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an additional trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors present on the jobsite on any day on which interviews are done for the four required contractors must be interviewed.

If a subcontractor having a subcontract for less than \$100,000 is not present on the day of an interview, that subcontractor will not have to be interviewed—unless there are payroll problems. If awarded a subcontract for less than \$100,000, the future fence subcontractor will not have to be interviewed—unless there are payroll problems.

### **Helpers, Apprentices and Trainees**

- **Helpers** “Helpers” as a classification listed on a payroll may not be used on LCDBG projects since such a classification is not found on any of the Louisiana wage decisions. The use of helpers who use tools in assisting mechanics and who are paid below the

minimum rates for mechanics is not proper, since an apprentice or trainee is the person who is to perform this type of work. If a person listed as a helper on a payroll were to be found working with the tools of a trade, Davis-Bacon would require such a person to be classified as a mechanic and be paid the amount of a mechanic's wages for the associated classification listed on the wage decision retroactive to the first day of work. If a person listed as a helper on a payroll were to be found doing the work of a laborer, Davis-Bacon would require such a worker to be classified as a laborer and paid at least the minimum for the classification of "laborer."

- **Apprentices** Apprentices will be permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training. If a worker is an apprentice, the contractor must submit a copy of his/her apprenticeship papers with the first payroll on which that worker appears.

Any worker listed on a payroll at an apprentice wage rate that is not a trainee as defined in the following paragraph or is not registered as an apprentice shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed.

The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision.

- **Trainees** Trainees will be permitted to work at less than the predetermined rate for their craft if they are employed and individually registered in a program that has received prior approval through formal certification by DOL. A copy of a trainee's papers must be submitted by the contractor with the first payroll on which the trainee appears.

Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress or a percentage of the associated mechanics rate as listed on the wage decision. The contractor or subcontractor may be required to furnish written evidence of the certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program to USDOL, HUD, OCD, and/or the local government.

**Use of Force Account Labor** Exhibit B-12 explains required record keeping for force account work. If the local government wishes to use force account, prior approval must be obtained from the Office of Community Development. The following paragraphs briefly discuss Force Account Labor.

- **The Meaning of Force Account Labor** Force Account Labor refers to the use of laborers or mechanics who are employed by the local government which serves as a contractor for the LCDBG construction project. In such cases, the local government/contractor does not have to pay the Davis-Bacon wage rates but can, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the LCDBG program.

- **Prerequisites for the Use of Force Account Labor** In order to use force account labor, three criteria must be met: (1) there should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors; (2) the local government must have the equipment, supervisory skills, a substantial portion of the required work force, and record keeping system; and (3) the legal counsel for the governing body must make a finding that the project is permissible in accordance with Louisiana laws and does not constitute a major project nor include construction of a building.
- **Labor and Equipment Requirements for Force Account Labor** The local government may hire some employees to work on the specific project to complement existing employees. The cost of equipment, including the cost of maintenance, operations, and minor field repairs is allowed. For example, the cost to replace a radiator that was punctured accidentally would be an allowable LCDBG cost. However, the cost to replace the engine of a diesel bulldozer on a short term street project would not be an allowable LCDBG cost. Equipment may NOT be purchased with LCDBG funds. The equipment cost to be allocated to the LCDBG project can be determined by use-allowance or depreciation value. Such allocations of cost must be approved by OCD. In rare instances, such as the breakdown of a primary piece of equipment during a street project, the cost of renting a replacement piece of equipment may be allowed with special written approval from the Office of Community Development.
- **Material Cost for Force Account Labor Projects** The costs of materials, including transportation and storage, are eligible costs under the LCDBG program. When the cost exceeds \$20,000, the purchase of materials must be by competitive bid.

**Section 3 Compliance** Section 3 requirements are discussed in **Task A-11**. As part of those requirements, a construction contractor(s) must provide information on new employees and may optionally provide information on existing employees.

- A "Contractor's/Subcontractor's New Employee Information Form" has been included as **Exhibit B-13** for the reporting of all new hires by the prime contractor and all subcontractors for verification of compliance with the requirements under Section 3 of the Housing and Urban Development Act of 1968. This form is required and must be submitted with the first payroll on which the new employee appears.
- A "Contractor's/Subcontractor's Existing Employee Information" form has been included as **Exhibit B-14** for the purpose of monitoring the existing workforce of the prime contractor and all subcontractors. This form is optional but if used must be submitted with the first payroll on which the employee appears.

Example: Joe Brown has been continuously working for XYZ, Inc., for 5 years on street projects all over south Louisiana. On the third week of an LCDBG project XYZ transfers Joe Brown to the LCDBG project. Joe will be considered an existing employee, and if the optional "existing employee information" form is used, it will be sent for review along with payroll number 3.

**Payroll Terminology, Requirements, and Review Procedures** Comments regarding payrolls are provided with **Exhibit B-15**. DOL also provides a sample payroll form along with instructions at [www.dol.gov/esa/forms/whd/index.htm](http://www.dol.gov/esa/forms/whd/index.htm). A payroll review flowchart is provided as **Exhibit B-16**.

- **Responsibility of Prime Contractor Regarding Subcontractors** The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the local government and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions (Part of **Exhibit B-17** and numbered within the exhibit as HUD 4010). If the required provisions are not included in a subcontract, the prime contractor remains responsible for underpayments and Liquidated Damages of subcontractors.

When labor standards violations occur, whether at the contract or subcontract level, the local government will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

- **Weekly Payroll Submission Requirements and Payroll Numbering** It is the weekly responsibility of each contractor, subcontractor, and any lower tier subcontractor to submit to the local government numbered weekly payrolls from the time work begins on the project until the work is completed. If no work is performed on the project during a given workweek, payrolls do not have to be submitted; however, the local government should be informed by phone or e-mail that no work was done. Once work resumes, use the next consecutive number. Example: Work was done during weeks 1, 2, 3, and 7—the payroll number for week number #7 would be Payroll #4.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the sub's payrolls and may require corrections. The prime forwards the sub's payroll(s) to the local government. Payrolls may be collected by the project engineer for submission to the local government; however, this does not relieve the prime contractor of responsibility for review of payrolls.

- **Payroll Forms** Contractors may use the payroll form, DOL publication WH-347, which is designated as **Exhibit B-15**. This form along with instructions is available on DOL's website by going to [www.dol.gov](http://www.dol.gov) and typing "WH-347" in the search box. The payroll preparer may also use instructions tailored to CDBG projects prepared by the Office of Community Development which are part of **Exhibit B-15**. The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called and still recognized by the Office of Community Development as the Statement of Compliance, although the document is no longer officially designated with the title of "Statement of Compliance." The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items of **Exhibit B-15** are included, but the wording of the Statement of Compliance must be verbatim.

- **Addresses and Social Security Numbers** The first and last name of each worker and last four digits of each worker's social security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker's privacy, the address and full social security number is not a required element of payrolls. However, the office or place of recordkeeping of each contractor must retain the full name, address, and social security number of each worker to provide to an authorized person requesting the information.
- **Signature on The Statement of Compliance:** The Statement of Compliance, which is now the certification portion of payroll form WH347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.
- **Prompt Submission of Payrolls** The local government should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor to the local government within seven working days after the payroll ending date. Payrolls must be examined promptly by the local government so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to ensure that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. If acceptable payrolls are not submitted in a timely manner, the local government may withhold contractor payment until acceptable payrolls are submitted.
- **Subcontractor Communication** The local government's contractual relationship is between the local government and the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, a direct relationship between the local government and subcontractor does not exist. Even though a direct contractual relationship does not exist, the Office of Community Development recognizes the following conditions under which the local government may communicate directly with a lower tier subcontractor regarding labor standards deficiencies: (a) the prime contractor agrees; (b) the subcontractor is cooperative; (c) the issues are not complex; and (d) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.
- **Concurrent Jobs** The payrolls must show only the regular and overtime hours worked on an LCDBG project. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" **hours should not be reported** on the payroll. However, the **gross pay from all job sites** must be shown on the payroll.
- **Wage Rates and Proper Classification** Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be

checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

- **Employees Performing Work in More Than One Classification** A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called “split” payrolls, may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure, useful in avoiding the extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in a given workday. Example: Joe, a backhoe operator, gets off of his backhoe to try to find a buried water line. He uses a shovel most of the morning—which is the work of a laborer—and finally finds the water line. Later, Joe mounts the backhoe and digs a trench for a sewer line, carefully avoiding the water line previously located. The employer may list Joe as a backhoe operator if Joe is paid the backhoe rate, which is the higher of the two possible rates.

- **Working Foreman Requirements** A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under Davis-Bacon requirements and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The “working foreman” if paid a flat salary with “salary” designated on the payroll, must be making prevailing wages for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet Davis-Bacon and CWHSSA requirements.
- **Classifications** Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met. Example: “Operator” is a generic classification; however, “Backhoe” is on the wage decision and would be a proper classification.
- **Fringe Benefits** If the wage decision calls for fringe benefits to be paid on behalf of any employee who worked on the project, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued by the local government.

Fringe benefits do not appear on the worker’s checks but are amounts paid to a receiving institution on behalf of the worker. Sometimes fringe benefits are confused with deductions. For instance, health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and paid for by amounts subtracted from the employee’s gross wages would be a deduction.

Fringe benefits that are common to the construction industry may be credited toward meeting Davis-Bacon requirements if they are paid to the employee as cash on the payroll or into an approved fund, plan, or program on the employee's behalf.

When this section or the Statement of Compliance mentions the payment of fringes “in cash”, actual payment in paper currency is not the meaning of the phrase but rather the compensation as dispersed on a payroll check is normally considered as payment “in cash.”

If a wage decision contains fringe benefits for a classification used on the construction project, box 4a or 4b of the Payroll Form/Statement of Compliance (**See Exhibit B-15**) must be marked to indicate the method of fringe benefit payment (i.e. in cash or to an approved plan). If there were no classifications used on the project that required fringe benefits, the boxes should be left blank. Box 4c is used to denote exceptions to box 4a or 4b. For example, if all of the employees are paid fringe benefits in cash except one who gets payment of fringes into an approved plan, box 4b would have been marked for payment of fringes in cash with box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are calculated at a per-hour-worked rate and are not calculated at a “time and a half” rate. However, when fringes are paid in cash the payroll reviewer must be able to differentiate the basic hourly rate from the fringe benefit rate in order to calculate overtime properly. This total hourly compensation (basic hourly rate plus hourly fringe benefits) should be separated into the two components (a) in column 6 of the WH 347 Payroll form (b) in the “Comments” section on the Statement of Compliance or (c) by supplementary signed statement from the employer. If the separate components cannot be identified the entire monetary compensation per hour must be multiplied times 150% to calculate required overtime minimum rates. The payroll reviewer is not at liberty to guess or try to mathematically calculate the amount of the fringe component—the fringe component must be clearly stated by the contractor. The following is an example where the basic hourly rate and the fringe benefit per hour is properly identified:

Basic hourly rate on wage decision	\$10.00 per hour
Fringe benefits requirement on wage decision	\$1 per hour fringe benefits
Workweek	52 hours
<b>Regular Pay + Overtime Pay + Fringe Benefits</b>	<b>= Gross Pay</b>
(40 x 10) + (12 x 10 x 1.5) + <b>(52 x 1)</b>	<b>= \$632</b>

Flexibility is allowed in the allocation of how fringe benefits are paid. Using the above example, the contractor has flexible payment options such as (a) pay all of the \$632 in cash; (b) pay \$580 in cash and \$52 in fringes; or (c) pay more or less than \$580 in cash and more or less than \$52 in fringes with the total paid to be \$632.

In contrast, if a total compensation rate of \$11.00 were identified with the components of the \$11.00 not identified then the proper overtime calculation required by the LCDBG program for the previous example would be:

$$(40 \times 11) + (12 \times 11 \times 1.5) = \$638$$

So, we see two different results. One result, \$632, was due to calculation based on the proper separation of the basic hourly rate and fringes and the other result, \$638, occurred based on calculations without proper separation of basic hourly rate and fringes.

The basic procedure to follow under the LCDBG program depends on which condition occurs. Condition One: If the payroll differentiates properly, then overtime at 150% of the basic rate must be paid while overtime at 150% is not required for fringes. Fringes are paid only at 100% for each hour worked regardless of whether an hour was an overtime hour or a straight time hour. Condition Two: If the payroll does not differentiate what portion of the compensation is the basic rate and what portion is the fringe benefit, then the overtime compensation must be calculated at 150% of the sum of the base rate plus fringe.

It is the responsibility of the contractor to provide payroll that properly differentiate the basic hourly rate from the fringe benefit amount. If proper differentiation is not initially provided the payroll review person may obtain a supplementary statement or corrected payroll from the contractor which indicates the breakdown between basic hourly rate and fringes for each person. The supplementary statement must be signed by an authorized person and clearly identify which payrolls are associated with the supplementary statement.

**What To Do When the Basic Hourly Rate is Less Than on Wage Decision** Total compensation, called prevailing wages as indicated on wage decision(s), is required. There is some leeway given regarding the breakdown of total compensation between the two components of basic hourly rate and the hourly fringe benefit. When calculating overtime pay where total compensation is adequate there is one notable restriction: if the basic hourly rate on the payroll is less than the basic hourly rate on the wage decision then the higher basic hourly rate on the wage decision must be used in the calculation of minimum overtime pay.

- **Verifying Fringe Benefits** Fringe benefits may be paid in cash and such payment(s) can be determined by examining the face of the payroll. When fringe benefits are paid in cash, box 4-b of the Statement of Compliance must be checked. Fringe benefits that are paid to an approved plan are not usually posted on the face of the payroll. When fringe benefits are paid to an approved plan, box 4-a of the Statement of Compliance must be checked. The fact that box 4-a is marked on the Statement of Compliance is acceptable to indicate that fringe benefits, equal to the amount stated on the wage decision, were paid. Most of the time additional verification will not be necessary. Additionally, if the basic hourly rate is less than required on the wage decision with the obvious claim that fringes are making up the balance due in order to meet the total Davis-Bacon requirements, verification of the payment of fringe benefits may be considered. In some

cases, where problems are suspected, verification of the payment of fringe benefits may be necessary.

- **Fringe Benefit Verification** An approved plan will have an institution(s) that receives fringe payments on some type of regular basis. Fringe benefit payments into an approved plan may be on a weekly, monthly, or quarterly basis but not semi-annually or annually. The applicable contractor will be the source of contact information for the receiving institution. Verification should include the following: (a) institution's name(s), (b) phone number(s), (c) date(s) contacted, (e) results of the inquiry, (f) person(s) contacted at the institution, and (g) the name of the person who made verification for the local government. Verification may be by phone, written correspondence, computer printout, or fax from a receiving institution, computer printout or fax from a union, or a copy of cancelled check(s) from the contractor written to a receiving institution. A computer printout from the contractor is also acceptable as supporting evidence of payment of fringe benefits.
- **Deductions** A deduction is an amount subtracted from a worker's gross wages. Deductions must be reviewed to determine if they are permissible. Permissible deductions by law include court ordered deductions, FICA, and federal or state income taxes. Deductions not required by law, such as union dues, 401K deductions, loan payback amounts or uniforms, may be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. The "Payroll Deduction Authorization" form provided as **Exhibit B-18** should be used.
- **Payroll Certification of the Self-Employed Contractor Who Works Alone**  
Example: A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a "working subcontractor," must be listed on the prime's (responsible employer's) payroll. For instance, Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on an LCDBG project. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages as well as the employee's wages.

The minimum information needed on the responsible employer's payroll regarding the working subcontractor are name, address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor, and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4-c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c may read something like, "Working sub, Lump sum contract, Fringes and deductions not applicable."

Sometimes it may be confusing for a prime contractor to list on his payroll a working subcontractor in addition to his regular employees. In such case, the prime contractor

may prepare a separate weekly payroll listing only one person, the working subcontractor, using the WH 347 payroll form. (**Exhibit B-15**).

Whatever method of compensation is utilized, such as piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an “effective” hourly wage rate that is not less than the prevailing hourly rate for the type of work involved.

A special exception for truck owner-operators is available. Truck “owner-operators” must be reported on the prime’s (responsible employer’s) weekly payrolls but unlike other classifications, do not need to show the hours worked or rates—only the notation “owner-operator.” The truck driver having an owner-operator exception is not to be confused with a truck driver working on-site for a prime contractor that does not fall under the exception.

- **Liquidated Damages** “Liquidated Damages” is a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the LCDBG Program, will mean the penalty amount calculated for overtime violations under the CWHSSA. The pre-determined penalty is \$10 per worker, per day for overtime violation(s). Please note that penalty amounts paid for overtime violations to a specified government entity as Liquidated Damages are separate and distinct from wage restitution paid to workers. Liquidated Damages are paid to a federal agency, namely HUD for LCDBG projects, in addition to any restitution paid to worker(s).

### **Corrective Actions Regarding Labor Standards Violations**

- **Inadequate Payroll Information** The payroll format, **Exhibit B-15**, contains the necessary information for payroll reporting and is a copy of WH-347 from the Wage and Hour Division of DOL. Alternate forms may be used by contractors but must contain the necessary information as on WH-347. If a contractor’s alternate form is not sufficient, the contractor will need to provide the necessary information on an acceptable form or provide a supplementary statement.

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

- **Handwritten Corrections On Face of Payroll By Reviewer Not Allowable** The local government, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. The reason is that such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the local government wishes to provide written clarification of a minor payroll item, a note with the reviewer’s name and date may be attached.

- **Three Scenarios of Payroll Review** Three scenarios regarding payroll review and corrective actions are identified in **Exhibit B-16**, the Payroll Review Flowchart. The three scenarios are as follows:
  - Scenario One: Error that involves restitution.
  - Scenario Two: Error that does not involve restitution.
  - Scenario Three: Error not detected.

Each scenario triggers a unique set of events. Review the “Payroll Review Flowchart,” **Exhibit B-16**, for an overview of the processes involved.

- **Notice to Contractor when Restitution is Involved** Scenario One deals with payroll error that involves restitution due to underpayment of wages. Underpayment may result from Davis-Bacon violation(s), CWHSSA overtime violation(s), or both. The local government must promptly notify the prime contractor in writing that payment of back wages is required. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid workers, the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll (as discussed below).

If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor of two choices regarding Liquidated Damages—pay or request a waiver.

- **Certified Correction Payroll** Under Scenario One a payroll that reflects restitution paid under Davis-Bacon and/or CWHSSA is called a “Certified Correction Payroll.” Such a payroll will always be prepared by the employer and the Statement of Compliance will be signed by the authorized signatory. The signature on the Statement of Compliance designates the payroll a “certified” correction payroll. A Certified Correction Payroll will only list those workers to whom restitution is paid. A Certified Correction Payroll may cover multiple weeks and must specify the weeks covered. The monetary amounts listed, wages and deductions, reflect restitution amounts paid and should not indicate amounts paid and listed on past payrolls. Optionally, a Certified Correction Payroll may also cover one week at a time.

Payroll problems that require the employer to prepare a Certified Correction Payroll may include the following:

- Wage rates on the payrolls do not meet Davis-Bacon requirements.
- Wage rates on the payrolls do not meet CWHSSA requirements.
- Worker classifications are wrong, incomplete, or not in accordance with the applicable wage decision resulting in restitution due.
- Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between amount paid and the required amount which should have been paid. The deficiency would be multiplied by

the applicable number of hours worked at the lower-than-allowable rate. Example: If a worker was paid \$10.00 per hour and should have been paid \$11.00 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be  $\$1 \times 100 = \$100$ .

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks. Example: Weeks 2 through 8 and 11. In contrast, a Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek but must indicate the appropriate revision number. Example: “Payroll #2—Revision #1,” “Payroll 3, Revision 1,” and so forth.

In most cases the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to demonstrate that restitution was made. Cancelled checks, employee initials, or an employee statement are no longer routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required by the Office of Community Development or other reviewing agency.

- **The Use of Corrected Payrolls to Demonstrate Restitution** Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:
  - A corrected payroll is always for one weekly period whereas a Certified Correction Payroll may cover multiple weekly periods.
  - A corrected payroll lists all workers who worked on a project during a weekly period whereas a Certified Correction Payroll lists only workers to whom restitution was paid.
  - A corrected payroll lists the original disbursements and disbursements made for the payment of restitution whereas the Certified Correction Payroll will list only the disbursements made for the payment of restitution.

If a contractor wishes to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature and date must accompany the corrected payroll. The corrected payrolls should be numbered so as to be associated with the original payrolls, such as “Payroll 2, Revision 1.”

- **Calculation of Liquidated Damages** We continue with Scenario One assuming that there was restitution due that involved not only Davis-Bacon but also overtime violation(s) under CWHSSA. Overtime rates must be paid at 150% of the basic hourly rate. This is commonly referred to as “time and a half.” Under CWHSSA, Liquidated Damages are computed at the rate of \$10 per worker for each calendar day the worker was required or permitted to work in excess of forty (40) hours in a week without payment of overtime rates.

For instance, if workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The Liquidated Damages calculation would be \$30 per worker. Liquidated Damages would be calculated in addition to the payment of wage restitution.

- **Steps in Calculation, Assessment, Payment or Appeal of Liquidated Damages** The local government calculates restitution due and Liquidated Damages due and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or a corrected payroll with certification) and must agree to one of the following two choices regarding Liquidated Damages: pay or request a waiver. The contractor is to notify the local government of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Please contact the Labor Compliance Officer at the Office of Community Development for instructions regarding a wire transfer. Such procedures involve filling out a special deposit-slip form, which is sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD and will, in fact, be sent a form that is equivalent to a deposit slip. The contractor will use a financial institution to conduct the wire transfer. After the wire transfer and proper notification/documentation of such payment to all parties concerned, the contractor's responsibility for payment of Liquidated Damages will have been met. The financial institution will charge the contractor a fee for making the wire transfer. The wire-transfer procedure is a very cumbersome process involving a multitude of steps before final resolution.

The other choice is to request a waiver. This option is most efficient as well as recommended by the Office of Community Development if the mistake in the payroll was unintentional. If requesting a waiver is the contractor's choice, the contractor is to send the local government written communication explaining the reasons why a waiver is requested. HUD will grant a waiver for two reasons:

- The error was unintentional although due care was exercised.
- A mathematical mistake was made.

The local government will forward the letter to the OCD, who will send the letter to HUD in New Orleans. Following HUD's response the OCD will communicate HUD's response to the local government by traceable correspondence. The local government is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, then labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, call the Labor Compliance Officer at OCD for further instructions. The contractor will have 60 days to appeal the notice from HUD.

- **The Use of Corrected Payrolls Where Restitution Is Not Due** Under Scenario Two as shown in **Exhibit B-16**, restitution will not be due but some type of correction not involving restitution is necessary. A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll. Example: “Payroll 4, Revision 1.” The contractor may line through the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature and date on a Statement of Compliance must be provided. One way to provide a new signature is by attaching a copy the original Statement of Compliance with a new signature and date above the original signature. Optionally, the contractor may wish to prepare a new Statement of Compliance, signed and dated, for any week having a corrected payroll.
- **Supplementary Statements** A supplementary statement from the contractor may be obtained to clarify not only major issues involving restitution but also minor issues that do not involve restitution. Situations where a supplemental statement would be acceptable include: (a) the payroll on which an employee appears does not have the last four digits of the Social Security number and (b) an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory, and also identify the associated payroll number(s). A Statement of Compliance does not accompany a supplementary statement.
- **No Error Detected** Scenario Three is identified as the scenario under which no error is detected.
- **Reporting Requirements** See the “Payroll Review Flowchart,” **Exhibit B-16**, for a visual diagram illustrating the three scenarios of payroll review and the reporting requirements triggered by each scenario.

A Labor Standards Enforcement Report could be considered an interim report normally completed during a project whereas a Final Wage Compliance Report is completed at the conclusion of a project. A Labor Standards Enforcement Report, (**Exhibit B-19**) is required when restitution cumulatively reaches \$1,000 or more for any contractor or subcontractor. Instructions for completing the form are included in **Exhibit B-19**. It is possible that one LCDBG project could trigger multiple Labor Standards Enforcement Reports.

The Labor Standards Enforcement Report is to be completed and sent to OCD when most or all of the corrective action has been completed. For instance, if a contractor made restitution and chose to pay Liquidated Damages, the local government could wait until receipt of evidence of restitution, contractor’s letter agreeing to pay Liquidated Damages, and payment of the Liquidated Damages before sending OCD the enforcement report. In such a case, the letter from the contractor agreeing to pay Liquidated Damages, evidence of the wire transfer, and the Labor Standards Enforcement Report would be sent together to OCD.

The Labor Standards Enforcement Report should be sent before closeout documents are submitted, especially if a waiver of payment of Liquidated Damages is requested, as HUD may take up to a month to respond.

Finally, under all three scenarios as the flow chart indicates, the last item regarding labor standards, the Final Wage Compliance Report (**Exhibit B-20**), must be sent to OCD. The Final Wage Compliance Report is to be sent to the Office of Community Development along with other closeout documents.

- **Reporting Restitution under Davis-Bacon and CWHSSA** In reporting restitution on the Labor Standards Enforcement Report or the Final Wage Compliance Report it is important to correctly classify restitution. The Davis-Bacon component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked. The following example is provided:

A laborer worked 48 hours in one work-week. He was paid \$10.00 per hour for 48 hours. The wage decision calls for \$11.00 per hour with no fringe benefits. Most payroll clerks would immediately know that \$52.00 of restitution is due; however, some may not realize the proper classification of each of the components of restitution. The proper classification would be \$48.00 under Davis-Bacon and \$4.00 under CWHSSA.  
 $48 \times \$1.00 \text{ plus } 8 \times \$0.50 = \$52.00.$

**Withholding Funds Based on Non-compliance with Labor Standards** If violations regarding restitution have not been corrected within thirty calendar days from the date of the first notice of underpayment, the local government may withhold funds due the prime contractor. Only an amount considered necessary to ensure payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld in order to meet Labor Standards requirements. If it is necessary to estimate the withholding amount, prompt action must be taken to determine an exact amount and disburse any applicable excess to the prime contractor according to invoices presented for payment. The local government must notify the prime contractor of the withholding and provide the second notice of underpayment. The local government must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed. If restitution is not made within 30 days of the second notice of underpayment, or if there is disagreement regarding the finding of wages owed, OCD must be notified.

If OCD determines it appropriate, the local government will be notified to disburse wages owed from the withheld funds to the respective workers to whom they are due. Should such an occasion arise, OCD must be contacted for information on the proper procedure for disbursement of funds.

**Withholding Funds Based on Non-compliance with LCDBG Requirements** If a Labor Standards violation(s) does occur that results in the local government not being in compliance with the approved LCDBG program, the Office of Community Development may suspend

payment on the next “Request for Payment.” For example, if the local government fails to ensure the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the local government may be considered as being in non-compliance with LCDBG program requirements.

**Unfound Workers** If all affected workers cannot be located and restitution made, either by the contractor directly or through use of withheld funds, enough funds must be reserved in the special account to pay those workers the wages owed. Efforts should continue to be made to locate workers; however, if they have not been located by the time the closeout of the grant occurs, the local government must return the withheld funds to OCD. A check, made payable to the Louisiana Division of Administration, and a Labor Standards Enforcement Report (**Exhibit B-19**) covering the remaining withheld funds must be submitted to OCD before the grant will be closed.

**Falsification** If intentional falsification by a contractor is suspected, the local government’s Labor Compliance Officer must not return the payroll to the contractor for correction and submittal. OCD must be informed of the suspected falsification.

**Payroll Retention** Payroll records must be retained by the local government for a period of four years from the date of the letter indicating “Final Close” of the LCDBG program relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of OCD, HUD, and DOL.

**Finalizing Labor Compliance** The Final Wage Compliance Report, **Exhibit B-20**, must be approved by the OCD Labor Compliance Officer before the grant can be conditionally closed out. If there are unresolved labor compliance problems at that time, the OCD Labor Compliance Officer will assist the local government in determining how to correct such problems.

## **Task B-2: Preparing Contracting Procedures to Meet Equal Opportunity Requirements**

In this task, you must make sure all contracts comply with equal opportunity requirements and establish procedures for monitoring compliance during project execution. You must include all applicable equal opportunity language in the bid specifications and contract documents, verify contractor eligibility, secure required documentation, monitor compliance, and maintain appropriate files.

The equal opportunity provisions and contractor certifications for inclusion in the bid documents are shown in the Contract Documents Guide (**Exhibit B-17**), and they include:

Contractor's Certification regarding Section 3;

Contractor’s/Subcontractor’s Section 3 Plan (if contract is over \$100,000);

Contractor’s/Subcontractor’s Section 3 Tables A & B (if contract is over \$100,000);

Subcontractor's Certification Regarding Section 3 and Segregated Facilities;

E.O. 11246 clause (7 paragraphs -- if contract above \$10,000 or 3 paragraphs Equal Opportunity provisions if \$10,000 or under);

Age Discrimination Act of 1975 Compliance;

Rehabilitation Act of 1973 Compliance;

Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (if contract over \$10,000);

Standard CDBG-assisted Equal Employment Opportunity Construction Contract Specifications (if contract over \$10,000);

Segregated Facilities clause;

Title VI clause;

Section 109.

These provisions must be included in all bid and contract documents. Note especially the Standard CDBG-assisted Equal Employment Opportunity Construction Contract Specifications. These specifications include a place for you to insert both minority and female goals. The nationwide goal for female participation is 6.9 percent. Minority goals are specific to MSA and "Economic Areas", so you must refer to the regulations for the minority goal for your locality. Minority employment goals for economic areas in Louisiana are included in **Exhibit B-21**. These goals and contract specifications make written affirmative action plans unnecessary unless the U.S. Department of Labor determines a specific contractor or group of contractors needs to establish higher goals in order to remedy the effects of past discriminatory behavior.

You must understand that these goals apply to each construction craft and trade in the contractor's entire workforce that is working in an area covered by the goals and timetables and not just on those jobs which are LCDBG-assisted. A contractor with an LCDBG contract in MSA X, and a non-CDBG assisted contract in MSA Y must meet MSA goals for the workforce in MSA X and MSA Y, even though that contract is not LCDBG-assisted.

Requirements for Section 3 apply to both the prime contractor and any subcontractors that conduct work on a CDBG project, if either of their contracts is over \$100,000. The Section 3 Plan and accompanying Section 3 Tables A and B (**Exhibit B-17**) must be completed by the prime contractor if his/her contract is over \$100,000. In addition, if a subcontractor's contract with either the prime or another subcontractor is over \$100,000, the Section 3 Plan and accompanying Section 3 Tables A and B must be completed by the subcontractor.

As previously noted for Labor Standards compliance, you must verify contractor and subcontractor eligibility with the DOA Labor Compliance Officer to ensure the contractor and any subcontractors are not on a list of debarred contractors. A single certification satisfies both Labor Standards and equal opportunity requirements and the documents should be cross-referenced between files.

You should notify the DOA Labor Compliance Officer of the date construction will begin. After contract execution, you should advise the contractor of his/her responsibilities for equal opportunity compliance, along with those related to Labor Standards and other LCDBG related provisions. **Exhibit B-22** is a list of commonly asked questions about equal opportunity which should be distributed and discussed with the contractor.

In addition, you must visit the construction site (usually in conjunction with employee interviews for labor standards compliance) to insure the project site is posted with the equal opportunity notices. Sample notices are included in **Exhibit B-10**. The results of each visit should be noted in the contract compliance file. In addition, the City/Parish should interview each contractor during the course of work to determine compliance with the Standard CDBG assisted Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in the contract. Document these interviews in the files. Equal opportunity compliance files must be maintained for each project. At project completion, the equal opportunity compliance file should contain the following items:

- Copy of contract with all applicable equal opportunity provisions;

- Evidence that contractor established his/her own Equal Opportunity file;

- Equal Opportunity complaints and actions taken;

- Correspondence concerning contractor's equal opportunity compliance;

- Verification of contractor eligibility, cross-referenced from labor standards compliance file;

- Preconstruction conference report (if applicable), cross-referenced from labor standards compliance file;

- Contractor's/Subcontractor's written Section 3 Plan, if required;

- Contractor's/Subcontractor's Section 3 Tables A & B (if required);

- Subcontractor's Certification Regarding Section 3 and Segregated Facilities;

- Contractor's/Subcontractor's New Employee Information forms;

- Site visit reports indicating equal opportunity poster displayed on site and contractor

compliance with equal opportunity provisions, cross-referenced from labor standards compliance file; and

Equal opportunity problems uncovered in employee interviews and evidence of resolution.

### **Task B-3: Preparing a Bid Package, Developing Bid Opening Procedures and Advertising for Bids**

The first step in the preparation of a bid package is the writing of the technical bid specifications -- usually by your architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project. Additionally, the plans and specifications must be stamped by an architect or engineer registered in Louisiana. If the project falls under the jurisdiction of another State agency (e.g., Department of Health and Hospitals for sewer and water projects), the plans and specifications must be approved by the cognizant State agency prior to construction. It is recommended that the approval be received prior to the advertisement for bids. Documentation of that approval must be included in the files.

Also, where applicable, once the working drawings are complete, the architect or engineer must execute a certification that applicable standards of accessibility by the handicapped have been or will be satisfied or specify the basis for exemption. Such certification is to be co-signed by a City official, filed in the contract documents file, and a copy sent to the State. This certification must be completed for fire stations/garages and buildings that will be accessible to the public constructed under the LCDBG Program. Refer to **Exhibit B-23**.

At this time, you must have obtained all lands, rights-of-way and easements necessary for carrying out the project. All property you acquire for any activity, funded in whole or in part with LCDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 (the Uniform Act). Included in the definition of property, among others, are rights-of-way and permanent easements. If your construction project involves real property acquisition, you should contact your Local Government Representative very early and make sure the acquisition is undertaken according to the provisions of the Uniform Act.

Although only local governing bodies may apply for funds, it is understood that many of the public improvements may be made on behalf of various third parties such as fire districts, water districts, and sewer districts, as well as port authorities. If ownership of the public improvement applied for will be transferred to one of these third parties, it will be necessary for the local governing body to enter into an intergovernmental cooperative agreement which will stipulate the conditions of transfer of ownership. This agreement is to be executed and a copy forwarded to the Office of Community Development prior to closeout. Examples of these agreements are shown in **Exhibit B-24**.

The grantee must contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area in accordance with R.S. 38:2223.

All public works contracts shall contain a clause stating that any punch list generated during a construction project shall include the cost estimates for the particular items of work the design professional has developed based on the mobilization, labor, material, and equipment costs of correcting each punch list item. The design professional shall retain his working papers used to determine the punch list items cost estimates should the matter be disputed later. The contracting agency shall not withhold from payment more than the value of the punch list. Punch list items completed shall be paid upon the expiration of the forty-five day lien period.

The base bid should include all components of the approved project. The base bid should not include any items which were not included in the approved application or which have not received subsequent approval from the Office of Community Development.

When preparing the plans and specifications for the bid package, the following requirement pertaining to service connection lines and hook-up fees must be kept in mind. As stated in Section 570.202(b)(6) of the Housing and Community Development Act of 1974, as amended, the "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost. It is eligible, however, as rehabilitation and will be considered as an integral part of the overall sewer or water project.

For those communities whose approved applications included the use of LCDBG funds for the construction or replacement of service connection lines, the following items must be taken into consideration:

- LCDBG funds will only pay for connection lines to residential structures which are occupied by low and moderate income persons. Both rental and owner occupied units are eligible for this assistance if the residence is occupied by low and moderate income persons. Although LCDBG funds cannot be used to finance the cost of connection lines to homes occupied by persons above the low/moderate income limits, the applicant must adopt and enforce a procedure which will ensure that all residences (regardless of income) will be connected to the utility system. This is necessary to meet the project impact certification (i.e., the project will completely remedy the existing violation of a state or federal standard). Also, residents cannot be counted as beneficiaries of a project unless they are connected to the utility system.
- In order for low and moderate income persons to qualify for financial assistance to pay for the construction or replacement of the service connection lines under the LCDBG program, all applicants must first complete an application form provided by the local governing body regarding the income status of all persons in the family. All applicants must attach documentation of their income to the application. Such documentation may include, but is not limited to: copies of paychecks or paycheck

stubs, income tax forms, W-2 forms, or copies of social security, welfare, veteran benefits, or unemployment checks. At this time the grantee should also negotiate a temporary construction easement with the private owner(s) to protect itself from any liability that may arise. See Section D – Real Property Acquisition. A sample application and temporary construction easement form is shown as **Exhibit B-25**. The exhibit form is for a sewer system, but can be adopted to apply to your type of project. The grantee is not required to use this particular form, you can develop your own to suit your project's needs.

- LCDBG funds cannot be used to pay the costs associated with the connection of non-residential structures.

Some communities/parishes charge hook-up fees. A hook-up fee is a one-time access charge that the homeowner must pay for the privilege of connecting to the utility system; this fee is generally a fixed amount which is not related to the actual construction cost of the service connection line. The federal regulations governing the use of LCDBG funds to pay the hook-up fee for the homeowner is very restrictive. If the community/parish plans to require this fee directly from the recipients of a utility system funded in whole or in part with LCDBG funds, a determination must be made by the Office of Community Development that such a fee would not have an adverse effect on the low/moderate income persons involved. Due to the complex federal regulations governing this matter, we require that all recipients which propose to collect a hook-up fee (whether from LCDBG funds or directly from the homeowner) schedule a meeting with the Office of Community Development to discuss such fees; this meeting must be held prior to the collection of such fees.

All recipients of funds under the LCDBG Program must post a sign in each target area for the purpose of informing the public that the work is being financed with a grant from the Louisiana Division of Administration. The cost of the project sign should be included in the bid package.

The bid package must include all LCDBG-related provisions and the general terms and conditions. In addition to the labor standards and equal employment opportunity provisions and documentation previously discussed, the following provisions for LCDBG assisted projects must be included, as applicable. These are shown in the Contract Documents Guide (**Exhibit B-17**). They include:

Bonding and Insurance Requirements;

Conflict of Interest;

Access to Records/Maintenance of Records;

Clean Air/Water;

Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition); and

Flood Insurance, if applicable.

The bid package must also include cost and pricing formats. Generally the street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum. For unit cost contracts, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost.

The bidding process must be in strict compliance with the Louisiana Revised Statutes, Title 38: Public Contracts, Works and Improvements. These statutes are continually being amended, revised, and superseded; therefore, it is the grantee's responsibility to assure compliance with the most recent and current regulations.

If you feel that your project or any portion thereof, falls within the definition of an "emergency" under Title 38 of the Louisiana Revised Statutes, you must contact your Local Government Representative within the Office of Community Development immediately. You cannot proceed with those emergency provisions unless you have received written approval of such from the Office of Community Development. Failure to receive written approval could result in disallowed costs.

It is *suggested* that the bid package be reviewed in its entirety by your legal counsel to ensure compliance with applicable federal, State, and local laws. All required bid documents are listed on the Table of Contents of the Contract Documents Guide (**Exhibit B-17**) and copies of the documents are provided therein.

The final plans, specifications, and cost estimate must be submitted to the Office of Community Development for review. **If revisions to the plans, specifications, and/or cost estimate are requested by this office, they must be submitted within 30 calendar days of the request. Failure to comply with this thirty day period for revisions submittal will result in an assessment of \$250 per working day.** The assessment will be deducted from the amount of LCDBG funds allowed for basic engineering services. If you are not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in the contract and disallowed. **If revisions are submitted timely but do not adequately comply with the revisions requested, the penalty may be assessed at the State's discretion.**

**Following our office's review of your plans and specifications, and all other program requirements have been met, you will receive a letter authorizing you to advertise for bids; we expect you to advertise for bids within thirty days of the date of that letter.** A copy of the publicized bid advertisement, including the publication date, must be submitted to the staff person in our office who is assigned to your grant. Failure to comply with this thirty day bid advertisement will result in an assessment of \$250 per working day. The assessment will be deducted from the amount of LCDBG funds allowed for basic engineering services. If you are not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in your contract and disallowed. If the failure to advertise for bids within the required timeframe is the fault of another party (the local government or the administrative consultant), then the penalty will be assessed accordingly. If there are extenuating circumstances which prevent publication of the advertisement for bids within the thirty day period, the local government must advise us of such prior to the end of the thirty day period and

request an extension of time. The State reserves the right to grant an extension when the reasons for not meeting the timeframe are valid.

Bids must be solicited by public advertising. A sample Advertisement for Bids appears in the Contract Documents Guide, (**Exhibit B-17**). The Public Bid Law requires that the advertisement for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality and the first advertisement shall appear at least 25 days before the opening of bids for construction projects. For materials purchases, the Public Bid Law requires the advertisement to be published two times in a newspaper in the locality and the first advertisement shall appear at least 15 days before the opening of bids. The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date. Additionally, the advertisement must call the bidders attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facility, Section 3, Section 109 and Equal Opportunity. If you amend the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents. No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids. **A copy of each addendum shall be submitted to the Office of Community Development at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions.**

All bids received prior to the opening of bids must remain sealed and in a safe place until the bid opening.

On the date scheduled, the public bid opening should be conducted in a businesslike manner. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening. However, the bids must also be reviewed for both technical and legal responsiveness of bids. In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required. Minutes of the bid opening, along with a tabulation of bids, should be placed in the contract file; a sample of minutes and bid tabulations is provided in **Exhibit B-26**.

After the bid opening, you must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. You and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. Please refer to LRS 38:2215 for any exceptions. A public entity may reject any and all bids for just cause. For more information about “just cause”, see LRS 38:2214B. Also, a contract cannot be awarded with an incorrect federal wage decision. Make sure you have verified the proper choice of the federal wage decision per the process described in **Task B-1**.

#### **Task B-4: Developing Procedures for When Bids Exceed Cost Estimates**

In some cases the lowest bid you receive will exceed the amount of funds you have allocated for the project. When this happens you have several options available to you. One option is to reject all bids received. The engineer/architect will then re-work the plans and/or specifications in an effort to lower the cost of the project. It is imperative that the Office of Community Development be consulted as to any proposed changes to the plans and/or specifications. A revised set of plans and specifications and an updated cost estimate may be required to be submitted to the Office of Community Development for review prior to re-advertising the project. Another option is to make up the difference between the available funds and the amount of the lowest bid through the reallocation of LCDBG funds. If the reallocation of LCDBG funds is involved, you must contact your Local Government Representative immediately for Office of Community Development concurrence and to make sure the reallocation does not affect your eligibility status. Another option is to make up the difference between the available funds and the amount of the lowest bid with other sources of funding such as local funds. Still another option is to enter into a contract with the low bidder for the amount of the bid and to, subsequently, execute delete change orders to bring the project within the allocated funds. It is strongly advised that you investigate how exercising this option would affect the other bidders prior to awarding a contract. Please remember that change orders must be approved by the Office of Community Development before execution. Contact the Office of Community Development for consultation before exercising any of these options.

If it is anticipated beforehand that bids received may be higher than the amount of funds budgeted, you may want to include alternate bids in the bid documents. Alternates may be in the form of deductive or additive alternates and the drawings should clearly show what is being considered as an alternate. Please be familiar with the requirements of the Public Bid Law regarding alternates as found in R.S. 38:2212A(3)(e) repeated here for convenience:

“(e) Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder.”

#### **Task B-5: Awarding a Contract, Notifying Contractors of Responsibilities and Issuing a Notice to Proceed**

If a contract is awarded, it must be awarded to the “lowest responsible bidder” in accordance with the Public Bid Law. Discretion has been given to public entities to determine bidder responsibility. A Court decision has concluded that, in determining bidder responsibility, the public entity may look to financial ability, skill, integrity, business judgment, experience, reputation, quality of previous work on contracts, and other similar factors bearing on the bidder’s ability to successfully perform the contract. If you propose to disqualify a bidder on the grounds that the bidder is not a “responsible bidder”, you must (1) give written notice of the

proposed disqualification to the bidder and include in the notice all reasons for the proposed disqualification, and (2) give the bidder the opportunity to be heard at an informal hearing at which the bidder is afforded the opportunity to refute the reasons for the disqualification.

As described in **Task B-1**, the successful bidder must be cleared by the Office of Community Development (see **Exhibit B-5**). Once the bidder is accepted and a contract has been awarded, you must send a **Notice of Contract Award (Exhibit B-6)** to the Labor Compliance Officer in the Office of Community Development within 30 days. Also, one copy of the **certified and itemized bid tabulation** shall be submitted to the Office of Community Development's engineer along with the Notice of Contract Award. In addition, an updated LCDBG **Disclosure Report (Exhibit A-53)** must be submitted to your Local Government Representative (LGR) within this 30 day period.

Following award of the contract, the contract documents and applicable bonding and insurance requirements must be completed and executed. Contract documents include all the items contained in the bid package as well as the executed contract, bid proposal, contractor certifications, and bonding and insurance forms. The bonding/surety company or companies used by the contractor must be on the U. S. Department of Treasury's Financial Management Services list of companies approved for federal bonds. They may be contacted by phone at (202) 874-6850, or online at [www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html). Verification of the status of surety or insurance companies must be carried out by you, and the date and method of verification must be clearly documented in your files. In addition, you must contact the Louisiana Insurance Commissioner's Office by phone at (225) 342-0895, or online at [www.ildi.state.la.us](http://www.ildi.state.la.us) in order to determine whether or not the agent selling the bond is currently licensed to do business in Louisiana. A form which can be used to document the phone calls is provided as **Exhibit B-27**. If the status of the company(s) was checked via the internet websites, a copy of the information located at the websites will be sufficient verification.

A pre-construction conference or other means of notification should be accomplished immediately upon contract execution to inform the prime contractor(s) of his/her responsibilities. These responsibilities include labor standards, (covered in **Task B-1**), equal opportunity, (covered in Task B-2), other State and local provisions, and technical job requirements. Others who must be aware of these responsibilities are the foreman or construction superintendent, the person who will be preparing payrolls, and all subcontractors identified in the bid.

At this time, you should correct any equal opportunity deficiencies such as Section 3 plans, certificates of compliance, et cetera that have not been submitted by prime contractors and subcontractors. You should also carefully explain contractor and subcontractor responsibilities regarding equal opportunity using the list of commonly asked equal opportunity questions (**Exhibit B-22**) as a guide. Also, requirements for the equal opportunity monitoring during site visits should be explained.

In addition, any subcontractors **not** identified in the bid should provide the data necessary to verify eligibility, sign required certifications, prepare a written Section 3 Plan, etc. All of these contractor/subcontractor responsibilities should be complete prior to start of construction.

After execution of the contract documents and notification of the contractor(s) and subcontractor(s) responsibilities, you should issue a **Notice to Proceed** to each prime contractor. The notice should state the construction start date and the scheduled completion date. Do not submit a copy of the Notice to Proceed to this office.

You should also review the contract file and associated compliance files to make sure documentation is complete. The following is a list of construction contract file requirements:

Preliminary design and cost estimates;

Final design documents and cost estimates;

Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;

Bid documents;

Documentation of submittal to and approval of plans and specifications by the cognizant State/Federal agency having jurisdiction over the project;

Certification of Compliance with Architectural Barriers Act, if applicable;

Proof of publication/copy of advertisement for bids;

Minutes of public bid opening;

Tabulation of bids;

Recommendation for award;

Notice of contract award;

Executed contract document;

Certification of insurance/bonding;

Notice to Proceed; and

Evidence of project sign requirements as shown in **Exhibit B-28**.

## **Task B-6: Monitoring Contractor Progress and Making Progress Payments**

The purpose of this task is to monitor construction contracts to insure compliance with technical specifications and State and Federal requirements, maintain adequate cost and budget controls, and process necessary contract changes in order to bring the contract to completion.

Upon receiving the Notice to Proceed, the contractor must submit a cost breakdown showing the amount assigned to each portion of the work. This breakdown is not required when per unit prices form the basis of payment under the contract. This breakdown must be reviewed by you and your architect/engineer and used as the basis for requests for payment. The breakdown should be submitted within 5-10 days of receipt of the Notice to Proceed.

During construction, you are responsible for monitoring equal opportunity and labor standards requirements as described in Tasks B-1 and B-2. You are also responsible for construction management. This may be done by the architect/engineer, and if so, should be included in the scope of services of 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.

The architect/engineer shall furnish a Resident Project Representative (RPR), assistants, and other field staff to assist the engineer in observing the progress and quality of the work. The RPR shall be under the architect/engineer's supervision and shall be a member of the architect/engineer's staff or a contract employee. In either case, the architect/engineer shall attest to the RPR's qualifications and abilities to perform the appropriate duties and responsibilities. The Qualification Certification (**Exhibit B-29**) must be completed and submitted to the Office of Community Development along with a copy of the RPR's current resume showing his qualifications and work history before construction begins. As part of his duties, the RPR will prepare reports recording, at a minimum, the following information: project name, contractor's name, date, weather conditions, contractor's work force (indicating work classifications), equipment (in use or idled), quantities of pay items installed, deficiencies in materials or work, general observations, summary of construction activities, and RPR's signature. Each report shall be completely filled out. Furnishing an RPR does not relieve the architect/engineer of the responsibility of making visits to the site at intervals appropriate to the various stages of construction.

Subtasks that are a part of construction management include:

General Supervision -- must include monitoring construction to alert you of the need for adjustments in design as dictated by actual field conditions and the need for contract amendments. All contract amendments affecting alignment and 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 an as-built facility.

Certification of Pay Estimates -- must include inspection reports and copies of field measurement notes; test results used to verify contractor's periodic pay estimates for partial payments should be attached to and filed with the periodic estimate for partial payment.

General -- construction management may involve other responsibilities including, but not limited to, providing horizontal and vertical control in the form of benchmarks and baselines to be used by the contractor in staking the construction, review and approval of shop drawings, and project coordination.

Upon receipt of requests for partial payment and necessary documentation, you must check equal opportunity and labor standards compliance files to insure that all payrolls have been received and checked, any restitution paid, employee interviews have been conducted, and all discrepancies corrected.

In accordance with the Public Bid Law, all change orders must be in writing. Change orders must be prepared and recommended by the architect/engineer. Each change order must be accompanied by a supporting statement which describes why the proposed change is deemed necessary. Preliminary (unexecuted) change orders, containing the signatures of the architect/engineer and the contractor but not the public entity, must be reviewed by the Office of Community Development so that the Office may determine the extent of financial participation eligible through the LCDBG Program. Once this determination has been made the local entity and the architect/engineer will be informed. The fully executed change order will contain the signatures of the architect/engineer, contractor, and local entity. A copy of the fully executed change order must be submitted to the Office of Community Development as soon as possible after execution.

### **Task B-7: Inspecting and Accepting the Work, Closing Out the Project, and Making Final Payment**

When construction work has been completed, the contractor must certify completion of work to you and submit a final request for payment. You must then arrange for a final inspection. You or your architect/engineer should make the final inspection and prepare a written report of the inspection prior to your issuance of a final certificate of payment. In addition, if the project involved the construction of a building, the Office of the State Fire Marshal, Code Enforcement, and Building Safety must issue a Certification of Occupancy.

Before making final payment (less retainage), you must insure that: all weekly payrolls and Statements of Compliance have been received, checked, and any discrepancies resolved; all discrepancies identified via on-site interviews must have been resolved; all other required equal

opportunity and labor standards provisions must have been satisfied; all contract submissions must have been received; all claims and disputes involving the contractor must have been resolved; all files must be complete; and as-built plans have been filed. You must also prepare a Final Wage Compliance Report (**Exhibit B-20**) which must be submitted to the State and placed in the Labor Standards Compliance file.

The contractor should file your acceptance of work at the designated location. You can then issue acceptance of work and final payment, less the retainage. After 45 days from the filing of the acceptance and upon submission of a clear lien certificate by the contractor, you may release the retainage to the contractor. If any claims or liens remain after the 45 day lien period, you must take appropriate action for disposition of the retainage and all claims against the bonds in accordance with State law.

In accordance with State law, you may withhold a maximum of ten percent retainage on construction contracts which are less than \$500,000 and a maximum of five percent retainage on construction contracts which are \$500,000 or more.

A comprehensive construction contract checklist is included as **Exhibit B-30**.

### **Task B-8: Restrictions on Fire Protection Projects**

The use of LCDBG funds for garages to house fire trucks is allowed with the following stipulations. The size of the garage will be based upon the number of operational fire trucks available to be housed there upon completion of the garage; LCDBG funds will not pay for vacant garage space which will be used for truck storage at a future date. The maximum size allowed for each bay is 20' x 50'. If there is a valid reason that this size is not sufficient, written approval from the Office of Community Development must be obtained. LCDBG funds will not pay for kitchens, training rooms, et cetera in garages for volunteer fire departments. While LCDBG funds can be used to install a bathroom in the garage, such monies will only pay for a lavatory and toilet; bathing facilities such as baths and showers are not eligible. LCDBG funds can be used to install a heating system in the garage but cannot be used to install a cooling system.

If you have any questions regarding the design of the garage, please contact the Office of Community Development.