

***CDBG-Disaster Recovery Program
(HURRICANE IRENE)
Handbook***

Labor Standards

CDBG-Disaster Recovery Program Handbook

Labor Standards

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(Revised 11/02)

**New Jersey Department of Community Affairs
CDBG-Disaster Recovery Program**

SUBJECT: Labor Standards Introduction

This section includes guidelines to help you comply with the labor standards requirements associated with construction projects undertaken with CDBG-Disaster Recovery funds. This information is intended to assist you in the successful implementation of your program.

We will assist you in any way possible. Please contact your assigned Program Representative if you have any questions.

Labor Standards

PURPOSE The purpose of labor standards monitoring is to determine whether the Grantee has complied with the following applicable statutes:

- A. Davis Bacon and NJ Prevailing Wage Act. All laborers and mechanics employed by construction contractors or sub-contractors under contract in excess of \$2,000 financed in whole or in part with grants or loans under the CDBG-Disaster Recovery Program shall be paid wages at rates not less than those prevailing on similar construction. The Davis-Bacon Act as amended (40 U.C.S. 276(a)- et seq) applies to the rehabilitation of residential property only if such property equals or exceeds eight units.
- B. Copeland Act. The Copeland Act, known as the "anti-kickback" prohibition, is applicable to work performed by laborers and mechanics. Implementing Department of Labor regulations provide that all laborers and mechanics shall be paid unconditionally and not less often than once a week and without subsequent deduction or rebate except "permissible" salary deductions. Contractors and sub-contractors are required to submit appropriate weekly compliance statements and payrolls to the Grantee.
- C. Contract Work Hours and Safety Standards Act. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) provides that laborers or mechanics shall receive compensation at a rate not less than one and one half times their basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any work week. In the event of violations, the contractor or sub-contractor shall be liable to any affected employee for his unpaid wages as well as to the United Sites for liquidated damages.

MONITORING VISITS

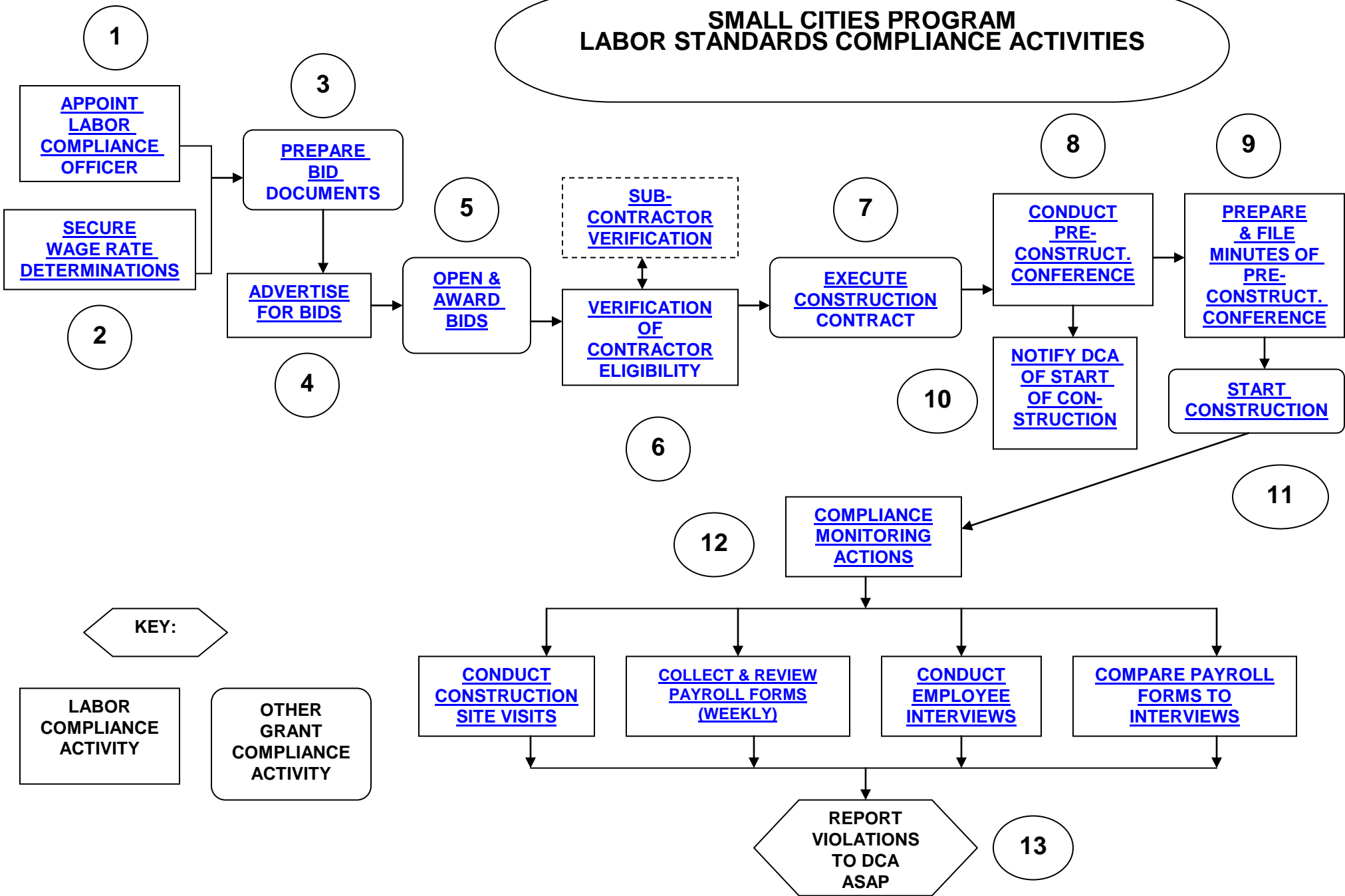
During the monitoring visit the DCA Representative will:

- A. Meet with the [Grantee's Labor Standards Officer](#).
- B. Review the Grantee's Labor Standards Enforcement file and complete the [Labor standards monitoring checklist](#).

GRANTEE RESPONSIBILITY

All CDBG-Disaster Recovery Program Grantees are required to administer and enforce the labor standards requirements set forth in Section 570.605 of the regulations of the Housing and Community Development Act of 1974. Grantees are to comply with the procedure as delineated on the following flow chart.

SMALL CITIES PROGRAM LABOR STANDARDS COMPLIANCE ACTIVITIES



Labor Standards Compliance

(Note: Numbers correspond to [the flow chart](#))

1. Appoint Labor Standards Compliance Officer

The Grantee will designate a Labor Standards Compliance Officer to ensure compliance with all applicable labor standard requirements. This person is to be appointed prior to the start of any construction activity and his/her name specified in the Grant Management Plan submitted to your program representative.

Labor Standards Enforcement File

The Grantee shall establish and maintain a "Labor Standards Enforcement" file for each construction project subject to labor standards provisions. All documentation must be available for DCA review. Such documentation shall include requests for wage decisions, bid documents containing applicable wage decisions and labor standards provisions, verification of contractor eligibility, executed construction contracts containing applicable wage and labor standards provisions, pre-construction conference minutes, notification of start of construction, weekly payrolls, apprentice registration records, on-site employee interviews and copies of correspondence, memoranda and forms relating to the administration and enforcement of labor standards provisions.

2. Secure Wage Rate Determinations

Grantees awarding any construction contract in excess of \$2000 shall obtain federal and state prevailing wage rates. The higher of the two wage rates shall be the wage rate used. Nothing, however, shall prohibit the payment of more than the prevailing wage rate to any workman employed on the construction project.

Federal prevailing wage rates may be obtained from the internet at <http://www.access.gpo.gov/davisbacon/>. State prevailing wage rates may be obtained from the NJ Department of Labor, Office of Wage and Hour Compliance at <https://wnjpin.state.nj.us/pw/prevwage.html>.

Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

Force Account Laborers and mechanics employed by a Grantee (e.g. Public Works Department) will not be considered laborers and mechanics employed by a contractor or sub-contractor when performing construction work financed by the CDBG-Disaster Recovery Program and shall not be subject to prevailing wage requirements which are otherwise applicable.

3. Prepare Bid Documents

The Grantee will ensure that all bid specifications include all applicable [federal](#) and [State](#) wage rate determinations and [labor standards provisions](#)).

6. Verify Contractor Eligibility

The Grantee shall request by e-mail or letter to the DCA Program Representative the current eligibility status of all contractors **and** sub-contractors to be used on any construction prior to award of contract. The Grantee shall provide the name and address of the construction company and each of its principal officers.

7. Execute Construction Contract

The Grantee will ensure that construction contract documents include all applicable wage determinations and labor standards provisions. Applicable wage rates are those in effect 10 days prior to bid opening, provided the construction contract is awarded within 90 days of bid opening. All predetermined State rate increases listed at time of contract award must also be paid, beginning on the dates specified. The “[Federal Labor Standards Provisions](#)” **must** be made part of all construction contracts.

8-9. Conduct Pre-Construction Conference

The Grantee shall hold a conference with the principal contractor and all available sub-contractors prior to the start of construction. At this conference responsibilities and obligations regarding the labor standards provisions contained in the contract documents will be discussed. A report shall be prepared and retained in the Grantee's files for each pre-construction conference. The report will contain:

- a. Project name, location and description
 - b. Name of Contractor(s).
 - c. Contract amount.
 - d. Date and place of conference.
 - e. Conference attendees.
 - f. Summary of items covered.
- (See Pre-Construction Checklist for Contractors.)

10. Notification to DCA of Start of Construction

The Grantee shall notify the program representative of start of construction for any covered project. Start of construction means the beginning of initial site clearance and preparation; provided those activities are pursued diligently and are followed without appreciable delay by other construction activities.

Use Of Apprentices And Trainees

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the US Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or are employed in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

Any employee listed on the payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined for the classification of work s/he actually performed. The contractor or sub-contractor will be required to furnish to the contracting officer or a representative of the New Jersey Department of Community Affairs written evidence of the registration program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work.

The wage rate paid apprentices shall not be less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination. Written evidence of apprentice registration shall consist of a copy of an Apprenticeship Standards/Apprenticeship Agreement Joint Approval form.

- b. Trainees (Except as provided in 29 CFR 5.16) will not be permitted to work at less than the predetermined rate for the work performed; unless they are employed pursuant to and individually registered in a program which has received prior approval from the US Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeyman shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined for the classification of work s/he actually performed.

The contractor or sub-contractor will be required to furnish the contracting officer or a representative of the Department of Community Affairs written evidence of certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal Employment Opportunity The utilization of apprentices, trainees and journeyman under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

12. Compliance Monitoring Actions

Construction Site Visits

Visits to the construction site by the Labor Standards Compliance Officer are an integral part of the compliance monitoring process. Careful observation of on-going construction work and asking questions of the workers involved may help to determine whether or not it is necessary to make a more detailed audit of payrolls and time-sheets. Progress reports, contractors' apprenticeship agreements and similar data, together with [interviews of employees](#) (recorded) and other questions here and there, may be sufficient to develop information as to whether there is compliance with the labor standards provisions. Failure to monitor compliance during the project may result in difficult adjustments by contractors and sub-contractors as well as the imposition of sanctions and penalties that could have been avoided.

Substantial amounts of time and money may be saved if violations are found and corrected in the early stages of construction.

The Labor Standards Officer should see that wage determination decisions and other required material pertaining to the required labor standards provisions are posted by the contractor at the worksite in a prominent and accessible place. Enforcement will be enhanced if a [poster](#) is conspicuously displayed which informs employees of their rights. This would also serve to put the sub-contractors on notice of the labor standards provisions.

Weekly Payroll Review

It is the responsibility of each contractor and sub-contractor to submit [weekly certified payrolls](#) for project work. If no work is performed by a contractor or sub-contractor during a given work week, weekly payrolls need not be submitted. Initial and final payrolls must be so marked by each contractor and sub-contractor. Payrolls shall be completed and submitted no later than seven work days following completion of the work week. The Grantee shall insist upon prompt submission of all payrolls.

It is the responsibility of the Grantee's Labor Standards Officer to verify that proper wage and fringe benefit rates are being paid by all contractors and sub-contractors. The proper wage and fringe benefit rate for a particular job classification must be equal to or greater than the highest of the corresponding federal or state prevailing wage rate and fringe benefit rate. Fringe benefits paid to approved plans, funds or programs must be verified by the Grantee's Labor Standards Officer.

HUD policy affords prevailing wage protection for all laborers and mechanics regardless of contractual relationship. There is no exception to this protection for self-employed sub-contractors. The most frequent occurrence of self-employed workers involves mechanic/trade classifications. These mechanics may be represented as sole proprietors, self employed mechanics, partners or corporate officers - all with no direct employees engaged in covered work. Certified payrolls reporting single or multiple owners (e.g., partners) certifying that they have paid to themselves the prevailing wage for their craft may not be accepted. These mechanics must be carried on the certified payroll of the contractor for whom they are working.

Owners of businesses working with their crew on the same job site may certify to the payment of their own prevailing wages in conjunction with the prevailing wages paid to their employees. This exception to reporting standards does not suggest that such owners are not likewise entitled to prevailing wages for their labor. Rather, it accepts the wage payment certification on weekly payroll reports by the owner for his/her own wages as that certification accompanies the certification offered for the payment of prevailing wages to his/her employees. Such owners need only list their name, work classification including "owner", and the daily and total hours worked. Such owners do not need to list a rate of pay or amounts earned.

Contractor weekly payrolls and other basic records should be reviewed during routine compliance enforcement activity on every construction project. Submitted payrolls shall be examined to assure compliance with labor standards. In examining payrolls, see that only classifications appearing on the wage determination are used and check for disproportionate employment of laborers, helpers, apprentices or trainees. Such payrolls and statements shall be produced at the request of the Department of Community Affairs at any time during the normal three year term in which records must be maintained.

- a. Payroll Forms. Contractors shall be urged to use the optional Department of Labor [Form WH-347](#), Payroll Form and [instructions on completing Form WH-347](#). A contractor may use an appropriate payroll of his/her own choice as long as it includes all of the information contained on the WH-347 and includes a signed weekly statement of compliance.
- b. Fringe Benefits. [The required weekly statement of compliance, Form WH-347, page 2](#), includes statements concerning the payment of the basic hourly wage rates.

Grantees and contractors are urged to obtain HUD publication "A Contractor's guide to Prevailing Wage Requirements for Federally Assisted Construction". The guide may be downloaded from the following HUD web site:

<http://www.hud.gov/utilities/intercept.cfm?/offices/olr/wagereq.pdf>

- c. Payrolls Must Be Obtained and Examined Promptly - Payroll Retention. The Grantee's contract or labor standards compliance person shall require the submission of all payrolls each week. The payrolls shall be examined upon receipt so that all necessary corrective action may be initiated before the problem multiplies, and may be accomplished while the workers are still available. Payrolls must be retained for three years by the Grantee following completion of the project and then may be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding. Clearance shall be obtained from the Department of Community Affairs prior to such destruction. Contractors and sub-contractors must retain their basic payroll records (payroll register, individual earning cards, etc.) for the same three (3) year period.
- d. Addresses and Social Security Numbers. Each worker's address and social security number must be reported on the first payroll on which his/her name appears. It is permissible for the contractor to omit the worker's address on subsequent payrolls if the contractor will report the worker's next address if and when an address change occurs.
- e. Incomplete Payrolls. Except where falsification is suspected, an incomplete payroll shall be returned to the prime contractor for completion. In most cases it will be better to require the prime contractor to supply the missing information by means of a new or supplemental payroll or a supplemental statement. If a payroll is false, it shall not be

returned to the contractor. A report of such findings shall be referred to the DCA Program Representative.

- f. Classification and Wage Rates. Classification and wage rates reported on the payroll shall be compared with the corresponding items on the applicable wage determination decision to determine whether the rate reported is at least equal to the rate required by the decision. If a lesser wage rate is found, the Grantee must request in writing the contractor to begin paying the required wage rate immediately and to make restitution to workers for past underpayments.
- g. Computations. Payroll computations shall be spot-checked to determine whether the payrolls are accurate. Scattered minor errors may be ignored. If such errors are numerous, however, the contractor should be requested in writing to exercise more care in preparing the payrolls.
- h. Deductions. Deductions shall be reviewed for any non-permissible deductions. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life pay, defraying costs of apprenticeship or similar programs. Questions regarding permissible fringe benefits must be referred to the Department of Labor for determination. All benefits not paid in cash must be documented with written verification from the contractor or sub-contractor.
- i. Internal Revenue Service (IRS) Employer Identification Number. The initial payroll submission from each contractor and sub-contractor shall contain the applicable IRS-Employer's Identification Number.
- j. Signature. The statement of compliance must be signed by the owner, officer, or designated employee of the contractor. Written authority must be furnished by the owner or officer of the contractor where a designated employee signs the payrolls.
- k. Requests by Outside Parties for Payrolls. In order to protect the personal privacy interests of employees, copies of weekly payrolls containing the individual's salary, work hours, claimed exemptions and tax status, address and social security number shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act unless any identifiers are first deleted.

Employee Interviews

Employee interviews shall be sufficient in number to establish the degree of accuracy of the records and the nature and extent of violations, if any. They shall also be representative of all classifications of employees on the project. Employees shall be encouraged to produce pay stubs or pay envelopes which document the wages received. The employee shall be informed that the information given is confidential, and that his/her identity will be disclosed to the employer only with the employee's written permission, and that s/he is being interviewed by an employee of the grantee.

- a. Place of Interview. Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises. In cases of falsification of records, fear of reprisals, or intimidation, it may be advisable to conduct the interview elsewhere, such as in the employee's home, at the Grantee's office, or other suitable place where it may be arranged.

- b. Initiating the Interview. The Grantee's labor compliance officer shall begin the interview by introducing himself or herself to the worker. S/he shall confirm his or her identity by showing the worker his or her credentials. S/he shall explain that the project is being constructed with the assistance of the federal government, that the payment of prevailing wages on federally-assisted construction projects is required by law, and that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid. S/he shall inform the worker of the specific location at which the applicable wage determination decision is posted at the project site.
- c. Mail Interviews. Employees and former employees may be interviewed by mail.
- d. Interview Time. If the interview is conducted on the job site it shall be arranged to cause the least inconvenience to the employer and employee.
- e. Oral Interview Statements. An employee interview need not be recorded in a signed statement when it serves merely to confirm what the records reveal, and it is not otherwise indicative of a violation, assuming no violation has been alleged and the records are adequate.
- f. Interview Form. Employee interviews are to be recorded on [Form HUD-11](#), Record of Employee Interview.

Comparison of Payrolls and Interviews

Grantees must ensure that:

1. Construction contractors designate the job classification of employees listed on the payroll.
2. The hourly rate includes the fringe amount as listed in the wage determination governing the project. Fringe benefits paid to approved plans, funds or programs must be verified in writing.

When any violation of labor standards requirements results in an underpayment of wages to employees, the Grantee must take corrective action. Where wage adjustments become necessary, the local labor standards enforcement officer must notify the prime contractor (the one responsible for the correction of all violations) in writing to make such adjustments. Should the violations not be corrected within thirty (30) calendar days of notification, the local labor standards enforcement officer upon written notice to the contractor may withhold amounts due the contractor as may be necessary to ensure payment of laborers and mechanics the rate of pay which should have been received by such laborers and mechanics and to cover liquidated damages under the Contract Work Hours and Safety Act (CWHSSA), if any and if applicable. Only an amount necessary to ensure payment of back wages and/or liquidated damages shall be withheld.

Failure to ensure that proper wages are paid during the course of the project will result in the Grantee bearing the burden of restitution whether or not sufficient funds remain in the grant budget.

CDBG-Disaster Recovery Program Labor Standards Monitoring Checklist

Grantee: «Grantee»
Agreement #: «Agreement»

Date: «Date»
Program Representative: «ProgramRep»

1. Contract Identification

Project Name _____

Name of Contractor _____

Description of Work _____

Bid Opening Date _____

Contract Award Date _____

Contract Amount _____

Start of Construction _____

Force Account Used _____

2. Contract Documents And Administration

Yes No N/A N/R

- A. Prevailing wage rates in bid specification? _____
- B. Notification of contractor eligibility in the file? _____
- C. Prevailing wage rates in contract?
Date of State decision _____
Date of Fed decision _____
- D. Are minutes of pre-construction conference in the file? _____

3. Payroll Review

- A. Payrolls submitted weekly? _____
- B. Payrolls numbered consecutively?
(initial, second, etc., final) _____
- C. Payrolls signed by employer or authorized representative? _____
- D. Statement of Compliance prepared for each payroll? _____

«Grantee»	«Agreement»	«Date»	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>N/R</u>
A.	Proper wages paid based upon a random sample of listed job classifications?		_____	_____	_____	_____
A.	Were proper fringe benefits paid?		_____	_____	_____	_____
A.	Were fringe benefits paid to approved plans or programs verified?		_____	_____	_____	_____
A.	Apprenticeship/Trainee registration certification from US Dept. of Labor?		_____	_____	_____	_____
	If not, are journeyman rates being paid?		_____	_____	_____	_____
A.	Record of additional classifications? (not covered in wage decisions)		_____	_____	_____	_____
A.	Is payroll review correspondence in file?		_____	_____	_____	_____
A.	<u>Employee Interviews</u>					
A.	Were employee interviews conducted by the grantee?		_____	_____	_____	_____
A.	Were a representative number of trades covered?		_____	_____	_____	_____
A.	<u>Assessment Of Grantee Labor Standards Administration</u>					
A.	Does the Grantee have designated staff to ensure compliance with labor standards?		_____	_____	_____	_____

Name: _____

Labor Standards (CONT.)

«Grantee» «Agreement» «Date»

B. Does the Grantee maintain full documentation attesting to the administration and enforcement of labor standards as indicated below:

		<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>N/R</u>
a.	Labor standards enforcement file for each construction project?	_____	_____	_____	_____
b.	Is the labor standards enforcement file organized to enable review based on chronological events?	_____	_____	_____	_____
c.	Is all labor standards enforcement documentation maintained at the same location?	_____	_____	_____	_____
C.	Is there a need for technical assistance?	_____	_____	_____	_____

Comments And Findings

Applicability

The project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR-5.5(a)(1)(iv); also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2)** The classification is utilized in the area by the construction industry; and
 - (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b)** If the contractor and the laborers and mechanics employed in the classification (if known, or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent to HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (approved by the Office of Management and Budget under OMB control number 1215-0140.)
- (c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for

- (d) determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee with the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
- (e) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under the contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage decision or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federally-assisted contract subject to Davis Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, and trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violation have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payroll and basic records. Payroll and basic records related thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely, all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete:

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been fully paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than the permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of WH-347 shall satisfy the requirement of submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available shall be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less

than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the training program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of ... influencing in any way the action of such Administration.....makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanic" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basis rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth on subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be

determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontracts to include these clauses in any lower tier subcontracts, The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Preconstruction Checklist For Contractors: Meeting Labor Standards Contract Requirements

I. Introduction

The following checklist has been prepared to assist contractors and subcontractors in meeting contractual labor standards responsibilities. All major administrative and procedural activities have been covered in the sequence they will occur as the construction project proceeds. Careful attention to and use of the checklist should result in a minimum of labor standards problems

II. Explanatory Notes

The word “employer” as used below refers to the project contractor, each sub-contractor, or each lower-tier sub-contractor. Payrolls and other documentary evidence of compliance (marked with an asterisk) are required to be sent to the recipient for review (all to be submitted through the project contractor). The delivery procedures is as follows:

- A. Each lower-tier sub-contractor, after careful review, submits required documents to the respective sub-contractor.
- B. Each sub-contractor, after checking his/her own and those of each lower-tier sub-contractor he/she may have, submits required documentation to the contractor.
- C. The contractor, after reviewing all payrolls and other documentation, including his/her own, and correcting violations where necessary, submits all to the recipient.

All employers should check each of the following statements as being true. If any statement is not true, the contractor or his/her representative should contact the recipient for special guidance.

III. Before construction begins each employer has:

- A. Not been debarred or otherwise made ineligible to participate in any federal or federally-assisted project.
- B. Received appropriate contract provisions covering labor standards requirements.
- C. Reviewed and understands all labor standards contract provisions.
- D. Received the wage decision as part of the contract.
- E. Requested through the recipient and received the minimum wage for each classification to be worked on the project not included on the wage decision by the additional classification process and before allowing any such trades(s) to work on the project.
- F. Requested and received certification of his/her apprenticeship program from the Federal Bureau of Apprenticeships and submitted a copy of an Apprenticeship Standards/Apprenticeship Joint Approval form to the recipient prior to employment.

IV. At the construction start the contractor has:

- A. Notified recipient of construction start date in writing.
- B. Has placed each of the following on a bulletin board prominently located on the project site which can be seen easily by the workers (and replaced if lost or unreadable any time during construction):
 - Wage Decisions ([State](#) and [Federal](#))
 - Notices to Employees ([WH1321](#))
 - Safety & Health Protection on the Job (DOL)
- C. Before assigning each project worker to work, has obtained worker's name, best mailing address, and Social Security Number.
- D. Has obtained a copy of each apprentice's certificate with the apprentice's registration number and his/her year of apprenticeship.
- E. Has informed each worker of:
 - his/her work classification (journeyman or job title) as it will appear on the payroll.
 - his/her duties of work.
 - the US Department of Labor's requirement on this project that he/she is either a journeyman, apprentice, or laborer
 - If journeyman, he/she is to be paid journeyman's minimum wage rate or more;
 - If apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his/her year of apprenticeship; or
 - If laborer, he/she is to do laborer's work only - not use any tool or tools of the trade – and not perform any part of a journeyman's work and is to be paid the laborer's minimum wage rate or more.
- F. Understands the requirements that each laborer or mechanic who performs work on the project in more than one classification and paid at the highest wage rate applicable to any of the work which he/she performs unless the following requirements are met:
 - Accurate daily time records shall be maintained. These records must show the time worked in each classification and the rate of pay for each classification, and must be signed by the worker.
 - The payroll shall show the hours worked in each classification and the wage rate paid for each classification.

- The payroll shall be signed by the workmen or a signed copy of the daily time record shall be attached thereto.
- G. Informed each worker of his/her hourly wages (not less than the minimum wage rate for his/her work as stated in the Wage Decision).
 - Time and a half for all work over 8 hours in any day or over 40 Hours in any work week (See Contract Work Hours Safety Standards Act).
 - Fringe Benefits, if any (See Wage Decision for any required).
 - Deductions from pay.
- H. Has informed each worker that he/she is subject to being interviewed on the job by the recipient, NJ DCA, NJ Department of Labor, or US Government Inspector, to confirm that his/her employer is complying with all labor requirements.
- I. Has informed each journeyman and each apprentice that a journeyman must be on the job at all times when an apprentice is working.

V. During Construction

A. Each Employer:

- Has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off, nor dismissed any project worker because of race, color, religion, sex, or national origin.
- Has employed all registered apprentices referred to him/her through normal channels up to the ratio of apprentice to journeyman in each trade used by the employer.
- Will maintain basic employment records accessible to inspection by the recipient, Department of Community Affairs, Department of Labor, or US Government Inspector.
- Is complying with all health and safety standards.
- Has paid all workers weekly.
- Has submitted weekly payrolls.

Prepared on recommended Form WH-347 or comparable form. A blank copy of [Payroll Form WH-347](#) and instructions for completing this form are included with this checklist.

- Some employers place all project workers on Payroll Form WH-347. The recipient does not review those project workers listed on the payroll who perform work which is descriptive of any of the following job titles which are exempt from labor requirements:

Project Superintendent
 Project Engineer
 Supervisory Foreman
 (Less than 20% of time as a working foreman)
 Messenger
 Clerical Workers
 Timekeepers
 Payroll Clerks
 Bookkeepers

- Any alternate payroll form should be cleared with DCA before employer starts work on the project. A project printout by computer, for example, is acceptable provided all data shown and required on the front and back of Payroll Form WH-347 is on, or included with, payroll submitted to recipient.
- Apprentice. If the worker is an apprentice, his/her registration number and year of apprenticeship is included in this column the first time the apprentice's name appears on the payroll.
- Split Classification. If the worker has performed more than one class of work during the work week, such as carpenter and laborer, the division of work will be shown on separate lines of the payroll.
- Accurate daily time records show the exact hours of work performed daily in each class of work, and are signed by the affected worker.
- Average Pay of Two Classes of Work Not Accepted. The employer shall not pay a "semi-journeyman" or semi-skilled laborer the average of journeyman's and laborer's rates. The actual hours each worker uses tools of trade (journeyman) and each hour he/she does not use tools of trade (laborer) must be recorded on the payroll.
- Helper. The work classification of "helper" is not accepted by the DCA, unless included in the Wage Decision issued by the Department of Labor for the project. Any employee listed as "helper" in absence of such classification in the Wage Decision must be paid the journeyman's rate for hours he/she uses tools of the trade.
- Apprentices. If a copy of the apprentice's registration certificate has not been Submitted to recipient by employer (through contractor), apprentice must be paid journeyman's rate.
- Weekly Payroll Review. Each employer has promptly reviewed the weekly payroll for compliance with all labor requirements (using this check list) and made necessary corrections.
- Each Lower-Tier Sub-contractor has submitted his weekly payroll or "no work" letter to the respective sub-contractor for the sub-contractor to have received within 3 calendar days from the last date of the work week. Each sub-contractor has received a payroll or "no work" letter from each and his/her own payroll, required necessary corrections, and submitted all of such payrolls to the contractor within 5 calendar days from the last date of the workweek.

- Contractor has received a payroll or “no work” letter from each Sub-contractor, monitored each including his/her own payroll, required necessary corrections, and collectively submitted them to the recipient within 7 work days of the last date of the respective work week.

VI. After Project Completion

Each Employer will keep all weekly payrolls on the project for 3 years after the contractor's project completion date.