

Labor Standards and Construction Management

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Introduction

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

Determining the Applicability of Labor Provisions

Federal Requirements

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

- **The Davis-Bacon Act (40 U.S.C. §§3141-3148)** requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction work that is financed in whole or in part with CDBG-DR funds of more than \$2,000.
- **The Copeland Anti-Kickback Act (40 U.S.C. § 3145 and 18 U.S.C. § 874)** requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.
- **The Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708)** requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all CDBG-DR-assisted construction contracts of \$100,000 or more.
- **Section 3 of the Housing and Urban Development Act of 1968** requires that recipients of HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

HUD has published two guides that are available for downloading on labor standards requirements: [“Davis-Bacon and Labor Standards Agency/Contractor Guide”](#) and [“Davis-Bacon and Labor Standards Contractor Guide Addendum”](#). [HUD Handbook 1344.1 Rev. 2](#) also provides detailed guidance on labor standards requirements.

Exceptions

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

- Construction contracts valued at \$2,000 or less. Note that arbitrarily separating a project into contracts below \$2,000 to circumvent the requirements is prohibited.
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. Such activities include real property acquisition, architectural and engineering fees, and certain pieces of equipment that would not become permanently affixed to the real property.
- Separate and distinct projects. In some cases, an activity can occur in the same vicinity as another activity, but because it is a separate and distinct project, labor provisions may apply to one and not the other. Contact DCA for guidance.

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

Additional activities may be exempt and DCA should be contacted if there is any situation where Davis-Bacon and related acts applicability is in question.

Equipment and Installation

Equipment purchases are generally ineligible for CDBG-DR funds. However, when CDBG-DR funds are used—either wholly or partially—to finance equipment, the applicability of wage rates to the installation work must be determined.

The general rule is that installation work associated with an equipment supply contract is subject to labor standards if it involves more than an incidental amount of construction activity. Factors requiring consideration include the nature of the prime contract work, the type of work performed by employees installing the equipment, the extent to which structural modifications to buildings are needed to accommodate the equipment, and the cost of the installation work, both in absolute terms and as a proportion of the total equipment and project cost.

A comprehensive equipment analysis must be completed, detailing all equipment items along with an explanation of associated installation or modification costs. This analysis must be submitted to DCA to make a proper determination.

Bidding and Contracting Requirements

A subrecipient must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in the Contracting chapter). The subrecipient is responsible for obtaining all required documentation, monitoring project compliance, maintaining appropriate files, and providing this documentation to DCA upon request.

Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Contractors working on projects funded by CDBG-DR must comply with both state and federal prevailing wage requirements. In New Jersey, this means adherence to the Davis-Bacon Act at the federal level and the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.) at the state level. When procuring for CDBG-DR funded contracts, the subrecipient should include both federal and state prevailing wages. If the state prevailing wage rate is higher than the federal rate, the contractor and every subcontractor on the project shall pay at least the state prevailing wage rate. If the federal prevailing wage rate is higher than the state prevailing wage rate, the prime and every subcontractor on the project shall pay at least the federal prevailing wage rate. New Jersey's prevailing wage determinations, available at: [New Jersey Prevailing Wage Rates](#).

Once it is determined that a construction project is subject to the federal Davis-Bacon and Related Acts (DBRA) provisions, the following steps must be taken to ensure compliance.

Step 1: Request Applicable Federal Wage Rate Decision

The subrecipient shall access federal wage rate decisions at <https://sam.gov/content/wage-determinations>.

Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. As this type of funding is issued in the wake of a disaster, CDBG-DR construction projects may stem from any of the four categories. In determining which type of wage decision to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

- **Building construction** generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
- **Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
- **Highway** projects include construction, alteration or repair of roads.
- **Heavy construction** is generally considered for all construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

DCA should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary.

If necessary, job classifications and prevailing wage rates are not available in the wage decision posted on [SAM.gov](https://sam.gov), the subrecipient is responsible for following the conformance process to request additional wage determinations. The Davis-Bacon conformance process is detailed on the DOL website here: [Davis-Bacon Conformance Process | U.S. Department of Labor](https://www.dhs.gov/davis-bacon-conformance-process).

The subrecipient should verify that no wage decision updates were made a minimum of 10 days prior to bid opening and contact DCA for further assistance if updates were made, as these must become part of a bid package addendum issued to all bidders.

Step 2: Add Labor Provisions to the Bid Package

The wage rate decision must be a part of the bid package. The bid package must contain the labor standards requirements, which are summarized below and detailed in the [HUD Form 4010](#).

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

HUD Form 4010 was updated in October 2023 after the implementation of the final rule, “Updating the Davis-Bacon and Related Acts Regulations.” The updated form should be included in all bid packages where these labor standards are triggered.

If the subrecipient fails to include the correct wage rate determination(s), the subrecipient will be responsible for paying the difference between the proper wage rate and the wages paid by the contractor based upon the information provided in the bid package. Subrecipients are reminded of the “Nine-day wage determination call” memo described in the Procurement chapter of this manual to document compliance with this requirement.

Preparing Contracting Procedures to Meet Section 3 & Equal Opportunity Requirements

The subrecipient must review all draft bid and contract documents to ensure compliance with equal opportunity requirements and establish procedures for monitoring compliance during project execution. The following equal opportunity provisions and signed contractor and subcontractor certifications must be included in all bid and contract documents:

- Certification of Bidder regarding Section 3;
- Section 3 Business Concern Certification Form;
- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (if contract over \$10,000);
- Standard CDBG-DR assisted Equal Employment Opportunity Construction Contract Specification (if contract over \$10,000);
- Certification of Non-segregated Facilities clause (if contract over \$10,000);
- NJ Law: Mandatory Affirmative Action Language for Construction Contracts under N.J.S.A. 10:5-31 and N.J.A.C. 17:27;
- Title VI Clause, Civil Rights Act of 1964;
- Section 109 clause, Housing and Community Development Act of 1974;
- Rehabilitation Act of 1973, Section 503 Handicapped clause (to all employers who have a contract or subcontract that exceeds \$15,000);
- Section 402 Veterans of the Vietnam Era clause (if contract over \$150,000); and
- Age Discrimination Act of 1975 clause.

Other Bidding and Contracting Requirements

Cost and Pricing Format

The bid package must include cost and pricing formats. Generally, bid specifications should delineate each type of item, estimating quantity, unit price, and estimated total cost. Although the use of lump sum pay items is allowable in some cases for certain activities, the overuse of this type of unit cost is not preferred as it does not allow the ability to review bid prices that may be outside the engineer's estimate. Contractors should be made aware that any lump sum prices are subject to a request for a "breakdown in cost" if requested. All bid packages should indicate that the subrecipient can reject any and all bids received. The subrecipient must comply with applicable New Jersey procurement code or federal CDBG/CDBG-DR regulations, whichever is more stringent.

Reminder: Cost plus percentage of construction cost methods of contracting must not be used.

Procurement Requirements

Once the bid document is prepared, it is time to advertise for construction bids. Refer to the Procurement Chapter for specific instructions on how to proceed with the bidding process.

Pre-bid Conference

The subrecipient should make reasonable efforts to ensure that responding parties fully understand the nature and requirements of the project being bid as well as any applicable regulatory requirements. It is recommended that a pre-bid conference be held, either on-site or

virtually, to address any general or project-specific questions and concerns. A sign-in sheet should be utilized to document which parties are present.

Pre-Construction Requirements

Pre-Construction Conferences

Before any work is performed by a contractor, DCA encourages that the subrecipient and any other technical advisors to the subrecipient conduct a pre-construction conference with the contractor and property owner or representative to explain contractual requirements and performance schedules. This conference reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the contractor and the subrecipient.

The subrecipient should prepare an agenda and plan to use and distribute a pre-construction checklist to ensure all areas are properly addressed. The subrecipient should clearly present the federal statutory compliance requirements and performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

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

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
 - At this time, the subrecipient should correct any outstanding deficiencies, such as securing signed Section 3 Certifications of Compliance.
- Obtain the contractor's Federal Employer Identification Number (FEIN).
- Obtain the contractor's System for Award Management (SAM) Unique Entity ID number.
- Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors. The Contractor will be required to submit a baseline project schedule to the subrecipient for review. Monthly schedule updates will then be required there after until the completion of the project.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact DCA immediately.
- Explain that employee interviews ([HUD-11](#)) will be conducted during the project.
- Emphasize that all required State and Federal labor posters including a copy of the wage rate decision and the wage rate poster must be posted at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the U.S. Department of Labor or federally-recognized State Apprenticeship Agency. If apprentices or trainees are to be used, the contractor must provide the subrecipient with a copy of the state certification of their apprenticeship program.
- If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law. If state wage rates apply to the contract, explain that workers must also be paid overtime if they work more than eight

hours in a day or 40 hours in a week, unless signed agreements have been obtained from each employee.

- Indicate that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) makes the contractor liable for not only restitution but also liquidated damages of \$33 per day for every day each worker that exceeded 40 hours a week without being paid time and a half. Subrecipients should contact DCA for assistance if a violation occurs.
- **Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee.** An unidentified payroll deduction is a method used by unethical contractors to get their workers to “kickback” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.
- Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.
- Provide the contractor with the [Workplace Posters | U.S. Department of Labor](#) link to the website containing the posters for “Davis-Bacon Act,” “Notice to All Employees Working on Federal or Federally Financed Construction Projects,” “Safety and Health Protection on the Job,” and “Equal Employment Opportunity is the Law.” The Contractor will need to print, laminate, and display these posters on the job site. Inform the contractor that it is their responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions. The Subrecipient is required to ensure the posters are prominently displayed at the project site.
- Provide the contractor with a copy of Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum which can be downloaded here: [Davis-Bacon and Labor Standards Contractor Guide Addendum](#) and [Davis-Bacon and Labor Standards Agency/Contractor Guide](#)
- Provide handouts explaining everything covered and obtain the contractor’s signature to document receipt.
- Explain the compliance monitoring that will be conducted during the project and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, the subrecipient will issue a Notice to Proceed to the general contractor to begin performance of the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The Notice

to Proceed must include the name of the contractor and the amount of the contract. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents. **The Notice to Proceed must be sent to DCA following execution.**

Contract File Review

The subrecipient should review each contract file and associated compliance file to make sure documentation is complete at the time of contract award. The following list of Construction Contract file requirements identifies the items that should already be located in the contract file.

- 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;
- Evidence that any utility relocation requirements are clear to the Contractor, including who is ultimately responsible.
- Bid documents;
- Approval of bid documents by authorities having jurisdiction over the project, as appropriate;
- Affidavit or documentation of the advertisement for bids;
- Pre-bid conference signature sheet;
- Addenda, if any, and evidence of timely distribution to plan holders;
- Signed minutes of public bid opening;
- Certified tabulation of bids;
- Recommendation for Award;
- Notice of Contract Award/Council or Fiscal Court Approval;
- Recommended pre-construction conference report;
- Executed contract and subcontract documents;
- Certification of Insurance/Bonding; and
- Notice to Proceed.

Payroll Review Requirements

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

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

Certified Payroll Reports must be submitted by the contractor to the subrecipient within seven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided by the U.S. Department of Labor in [Form WH-347](#). Note that an employee's full social security number and address are not to be included on these certified payroll reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. A Statement of Compliance must accompany each payroll submission.

Certified Payroll Reports must be reviewed by the subrecipient upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the subrecipient to indicate that they have been reviewed. **IMPORTANT:** Original "wet-ink" signature payrolls must be submitted with the final invoice package once any discrepancies are corrected.

It is required that all contractors state "No Work This Period" on the certified payrolls if they are not performing any work for that period. An example of this would be if a contractor begins their work in May but then stops work for a few months and then resumes, they are required to continue to submit certified payrolls for the entire period and note any periods no work was performed.

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

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance (part of the certified payroll form WH347) has been completed and signed by the owner or an officer of the firm.

Any discrepancies and/or falsification indicators must be reported to DCA, along with the steps being taken by the subrecipient to resolve the discrepancies. Where underpayments of wages have occurred, the subrecipient is responsible to make sure the correct wages are paid, and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

Subrecipients are required to submit a Section 5.7 Report whenever an employer is found to have underpaid its employees by \$1,000 or more or where there is reason to believe that the violations are aggravated or willful. Note, the \$1,000 threshold refers to the underpayments of a single employer to its entire workforce and not to individual employees. Subrecipients should contact DCA for assistance if a violation occurs.

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

New Jersey Wage Hub

As of the Fall of 2023, N.J.S.A. 34:11-56.29 requires contractors to submit certified payrolls online to the NJ Wage Hub *and* directly to the public body (as indicated above). If the Subrecipient is registered to use the Wage Hub, then the contractor can submit the records to the Subrecipient through the Wage Hub. Otherwise, the contractor needs to submit the certified payrolls to the Subrecipient in the original manner it used before the Wage Hub in addition to uploading the records to the hub to comply with the 2023 Statute. For more information on the NJ Wage Hub please see the [New Jersey Wage Hub Website](#).

Construction Management Requirements

General

During construction, the subrecipient is responsible for monitoring the labor standards and equal opportunity requirements described in this chapter. In addition to payroll reviews and interviews, the subrecipient is responsible for ensuring proper construction management. This role may be fulfilled by the architect/engineer and, if so, should be included in the scope of services for that professional services contract. Construction management must include on-site inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications, as well as quantity and quality control. The subrecipient may assign construction management duties (such as on-site inspections and quality control) to the project's architect or engineer provided these duties are clearly defined in the professional services contract. However, the subrecipient ultimately remains responsible for ensuring compliance with all HUD labor standards and procurement requirements.

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

On-Site Interviews

Construction management requirements include conducting job site interviews with workers using [Form HUD-11: Record of Employee Interview](#).

The subrecipient is encouraged to use on-site interviews as a proactive enforcement tool. Instead of conducting interviews randomly for the sake of assembling a sample, HUD encourages interviews to target groups of workers where violations are suspected or alleged. Additionally, best practice is to interview at least one employee in each job classification working at the site.

The subrecipient should ensure the following actions are performed:

- Interviews are conducted at least once during each phase of construction on each project.

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

Interview Protocols

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

- The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process).
- The interviewer should see that the wage determination and other required posters are properly displayed.
- The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and subcontractors should be interviewed. Administrators may choose to complete the Project Wage Rate Sheet found in HUD-4720. This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.
- To initiate the interview, the authorized person shall:
 - Properly identify themselves;
 - Clearly state the purpose of interview; and
 - Advise the worker that information given is confidential, and their identity will be disclosed to the employer only with the employee's written permission.
- When conducting employee interviews, the interviewer should pay particular attention to:
 - The employee's full name. The employee's home mailing address.
 - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
 - The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
- The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
- If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - Ask for any records.
 - Arrange to re-interview the employee.
- Enter the worker's statement of their classification.
- Observe duties and tools used:
 - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
 - If there are discrepancies, detailed statements are necessary.

- NOTE: If an employee performs duties belonging to another classification, they must be paid accordingly for the time they are performing in the other classification.
EXAMPLE: An employee who is classified as a Laborer operating machinery should be paid for that time as an Operator and the rest of the time as a Laborer.
- Enter any remarks necessary.
- Enter date interview took place.
- If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form ([HUD Form 4731](#)).
- The payroll examiner must compare information on the Record of Employee Interview form with the certified payroll submission:
 - If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form.
 - If discrepancies do appear, appropriate action should be initiated.
 - When necessary action has been completed, the results must be noted on the interview form.

Wage Restitution

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

Notification to the Prime Contractor

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

Computing Wage Restitution

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

Correction Payrolls

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

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

A properly signed Statement of Compliance must be attached to the correction certified payroll.

DCA requires that the contractor obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) to document the payment, however it is recommended. This is to ensure that the subrecipient can adequately enforce the unfound workers requirements.

Review of Corrected Certified Payroll

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

Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise can't be located. After wage restitution has been paid to all the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. The subrecipient must continue to attempt to locate the unfound employee(s) for three (3) years after completion of the project. After three (3) years, any amount remaining in the account should be credited and/or forwarded to DCA.

Liquidated Damages for Overtime Violations

As mentioned previously, failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act (more than 40 hours per week) makes the contractor liable for liquidated damages of \$33 per day for every day each worker exceeded 40 hours a week without being paid time and a half ([29 CFR 5.8](#)). Subrecipients should contact DCA for assistance if a violation occurs.

Semi-Annual Labor Standards Enforcement Reports

Subrecipients must submit Semi-Annual Labor Standards Enforcement Reports ([HUD 4710](#) and [4710i](#)) twice a year. The first report should include all contracts subject to Davis-Bacon and Related Acts awarded between October 1 and March 31. It is due no later than March 15. The second semi-annual report should include all contracts subject to Davis-Bacon and related acts awarded between April 1 and September 30. It is due no later than September 15. Reports are

due prior to the end of each reporting period to allow DCA sufficient time to review and submit to HUD. Subrecipients should make their best efforts to include all contracts that have been executed during the reporting period. If any unexpected changes occur after the report has been submitted to DCA, they can be included in the subsequent reporting period. If no contracts were awarded, please fill in the agency name (city or county), the period covered and mark “not applicable” at the top of the form.

Equal Opportunity Requirements

The subrecipient must also visit the construction site to ensure the project site is posted with the required Equal Employment Opportunity is the Law poster (PDF in English and other languages found here: <https://www.eeoc.gov/poster>). These visits can be done in conjunction with employee interviews for labor standards compliance. The results of each visit should be noted in the Equal Opportunity Compliance file.

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

Equal Opportunity Compliance Files

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

- Correspondence concerning contractor equal opportunity compliance.
- Site visit reports indicating equal opportunity posting on site and contractor compliance with equal opportunity provisions, cross-referenced from Labor Standards Compliance file.
- Equal opportunity problems uncovered in employee interviews and evidence of resolution.
- Evidence of interview with contractor concerning equal opportunity compliance.

Review and Payments

Payments

Upon work completion, a contractor may submit a request for payment. The request must include all required items listed in the **Contractor Invoice Package Checklist**.

Upon receipt of the payment request and necessary documentation, the subrecipient must check equal opportunity and labor standards compliance files to ensure that:

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

Retainage

Including retainage in contracts with construction contractors is a recommended best practice that helps subrecipients maintain oversight and promotes timely project completion. Retainage (typically a percentage of each payment withheld until the project reaches substantial or final completion) serves as a financial incentive for contractors to meet performance standards, address deficiencies, and adhere to project schedules. By incorporating retainage provisions,

subrecipients can mitigate risks associated with incomplete or subpar work while maintaining compliance with CDBG-DR requirements. It is recommended that subrecipients should clearly define retainage terms in their contracts, including conditions for release.

Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders to contracts executed by subrecipients of this program may be required to address unforeseen and/or unanticipated circumstances. Any changes that revise line items in the schedule of values or increase project costs due to unanticipated scope requirements must be submitted through a written change order with supporting documentation. The supporting documentation includes, but is not limited to, a completed **Change Order Form**, the contractor's estimate and schedule, a written justification for the change order, and evidence of cost reasonableness. DCA will review the change order and determine whether a grant amendment or environmental re-evaluation is necessary. Any amount in excess of the grant award will be considered an overage and will be the responsibility of the applicant. Change orders should be kept to an absolute minimum and cannot be issued after final payment. Change orders which do not conform to the above requirements may ultimately not be funded by DCA.

Final Payment

When construction work has been completed, the contractor must confirm completion of work with the subrecipient. The subrecipient or the architect/engineer should conduct the final inspection and prepare a written inspection report. Before requesting the final payment, the subrecipient must ensure that all required closeout documentation is in order and:

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

Documentation Requirements

The labor standards compliance documents contain highly sensitive and confidential information. It is critical to carefully guard this sensitive information so that the person(s) or form(s) to which that information pertains is not unduly exposed to financial or personal risk. The standard compliance documents must be preserved and retained for a period of seven years following the completion of work. Therefore, it is important to follow guidelines outlined in the [Labor Relations Letter 2006-02](#) to minimize risk of improper and/or unnecessary disclosure.

- Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);

- Do not include full Social Security Numbers or other sensitive personal identifying information on documents and records;
- Do not disclose the identity of any informant unless it is necessary and only if authorized by the informant; and
- Dispose of documents and records containing sensitive information responsibly.

At project completion, in addition to the equal opportunity file requirements described in the sections above, each contract file should contain the following labor standards compliance items:

- Wage Decision(s);
- “Nine-Day Call” documentation (ensuring wage decision is still current);
- Copies of Contractor Certifications Concerning Labor Standards (or cross reference contract file that includes executed certifications);
- Documentation of Bid advertisement;
- Copies of all bid responses;
- Minutes of the bid opening;
- Verification of contractor/subcontractor eligibility;
- Notice of Award;
- Executed construction contract;
- Pre-construction Conference Report;
- Notice to Proceed;
- Contractor Employee Breakdown Report;
- Weekly payrolls, Statements of Compliance, and evidence that payrolls were reviewed;
- New Jersey Prevailing Wage Overtime Agreement (if applicable)
- Employee interviews;
- Site visit reports;
- Engineering inspection reports;
- Evidence that the on-site interviews were checked against payrolls and the applicable wage rate decision;
- Evidence of restitution/resolution of identified discrepancies;
- Complaints from workers, if any, and actions taken;
- Liquidated damages assessed, appeals, if any, and outcome;
- Change Order backup documentation;
- Notice of Completion/Final Inspection;
- Semi-Annual Labor Standards Enforcement Reports; and
- Section 5.7 Enforcement Report

Section 3

[Section 3 of the Housing and Urban Development Act of 1968](#), as amended, requires DCA to ensure that employment and other economic and business opportunities generated by HUD financial assistance, to the greatest extent feasible, are directed to low-and very low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low-income persons.

It is the policy of DCA to ensure that economic opportunities generated from HUD-funded projects to the greatest extent feasible, will be directed to low and very low-income persons, particularly those receiving assistance for housing, and the businesses that provide economic opportunities to these persons.

DCA will comply with the minimum numerical goals set forth in [24 CFR Part 75](#):

- 25% of the total project hours be done by Section 3 workers
- 5% or more of the total hours of a project performed by targeted Section 3 workers.

If unable to meet these numerical benchmarks, subrecipients will be required to demonstrate qualitative efforts conducted during the reporting period to promote Section 3 to potential Section 3 workers and business concerns. See DCA's Section 3 Plan for more information and detailed program requirements.

Source Documents

File Name	Contractor Invoice Package Checklist (attachment)
File Name	Change Order Form (attachment)
File Name	HUD Form 4710: https://www.hud.gov/sites/default/files/OCHCO/documents/4710.pdf
File Name	HUD Form 4710 Instructions: https://www.hud.gov/sites/dfiles/OCHCO/documents/4710i.pdf
File Name	HUD-11 Record of Employee Interview: https://www.hud.gov/sites/dfiles/OCHCO/documents/11.pdf
File Name	Certified Payroll Form WH-347: https://www.dol.gov/whd/forms/wh347.pdf
File Name	HUD Form 4010 Federal Labor Standards Provisions: https://www.hud.gov/sites/dfiles/OCHCO/documents/4010.pdf
File Name	HUD Form 4731 Complaint Intake Form: https://www.hud.gov/sites/dfiles/OCHCO/documents/4731.docx
File Name	HUD Homepage for Davis-Bacon and Labor Standards and Related Forms: https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform