



July 10, 2026

**INVITATION TO BID**

Please note, the City of Auburn is updating its online bid notification system to better communicate with those interested in bidding on City Projects. To receive notifications bidders need to register in the City's [Vendor Self Service \(VSS\) System](#).

Those already registered in VSS will need to add their NIGP commodity codes. Previously entered codes were removed from all vendor records in VSS during the system update. Please note, NIGP commodity codes are required for vendors to receive bid notifications.

Sealed bids will be received by the City of Auburn, Alabama, until 2:00 p.m., local time, on Thursday, July 30, 2026, in the Office of the City Manager, 144 Tichenor Avenue, and then be publicly opened and read at the City Meeting Room, 122-B Tichenor Avenue, for furnishing all labor, materials and equipment necessary for the completion of the following project:

**CLARK AVENUE  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

The following approximate quantities (not complete list):

DESCRIPTION	UNIT	QUANTITY
424-A Superpave Bituminous Wearing Surface, 1/2 Inch Max Aggregate Size, ESAL Range C/D, 1.5 inches thick	Ton	330
424-B Superpave Bituminous Binder Layer, Patching, 3/4 Inch Max Aggregate Size, ESAL Range C/D	Ton	50
Milling, 1.0 – 2.0"	Sq Yd	3,924

There will be a **MANDATORY PRE-BID MEETING** at 10:00 a.m. local time Tuesday, July 21, 2026, at the Engineering Services Department, located at 161 North Ross Street, Auburn, AL.

Plans, specifications, and contract documents are available for viewing, free of charge, at [www.auburnalabama.org/bids](http://www.auburnalabama.org/bids). Plans and specifications may be obtained by prime contractor bidders electronically at no charge via email by request. Please email

[webengineering@auburnal.gov](mailto:webengineering@auburnal.gov) for information on obtaining these plans and specifications. Please contact **Justin Foster**, Project Manager, 334-501-7390 for additional project information.

Guarantee will be required with each bid as follows: At least five percent (not to exceed \$10,000) of the amount bid in the form of a certified or cashier's check or bid bond payable to the City of Auburn, Alabama.

Your attention in particular is invited to the section entitled "Instructions to Bidders", which is to be followed in all respects. The City reserves the right to select the lowest responsible bidder as the best interest of the City may require, to award the purchase contract from any of the bids, to reject any and all bids, and to waive any informalities in bids received. Bids will be good for thirty (30) days after being opened by the City of Auburn, Alabama.

Failure to complete the project (all pay items) within thirty **(30)** consecutive calendar days after the date specified in the Notice to Proceed may result in the assessment of liquidated damages in the amount of \$1,850.00 per calendar day for each day the contract remains incomplete.

All bidders are required to be compliant with the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (Code of Alabama (1975) § 31-13-9) as amended May 16, 2012 regarding employment practices. Documentation of enrollment in E-Verify should be included with the bid and will be required as a condition for the award of any contract. All bidders are advised that the award of the contract is conditioned on the bidder not knowingly employing, hiring for employment or continuing to employ an unauthorized alien within the State of Alabama. The awarded contract will contain a provision whereby the bidder pledges not to violate federal immigration law.

Legislative Act 2016-312 (the "Act") prohibits the City from entering into contracts with any business entity that is actively engaged in or plans to engage in the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade; unless such business entity provides the goods or services for at least 20 percent (20%) less than the lowest business entity in compliance with the Act. All bidders understand and agree that in the awarded contract, the lowest responsive bidder must either certify that it is in compliance with the Act and agree that it will not violate the act during the term of the contract; or agree to offer the goods or services for at least 20 percent (20%) less than the lowest business entity certifying compliance with the Act.

Bids must be submitted upon the standard forms furnished by the City of Auburn, Alabama. No bids may be withdrawn for a period of thirty (30) days after the scheduled closing time for the receipt of bids. A sealed envelope containing the original proposal and one (1) copy must be delivered or mailed to:

Purchasing Officer, City of Auburn  
144 Tichenor Avenue  
Auburn, Alabama 36830

The envelope should be plainly marked on the outside as follows:

**BID: CLARK AVENUE FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT  
(CDBG) RESURFACING PROJECT**  
**OPENING: 2:00 P.M., LOCAL TIME**  
**DATE: THURSDAY, JULY 30, 2026**  
**STATE LICENSE NO. \_\_\_\_\_**

Documentation of the issuance of a State contractor's license as required under Title 34, Chapter 8 of the Code of Alabama, 1975, shall be included with the bid proposal and shall be required as a requirement of the award of the contract. State license number and expiration date should be clearly and plainly marked on the outside of the bid proposal envelope.

The successful bidder is responsible for acquiring the appropriate business licenses and permits to conduct work with the City of Auburn. In addition to the business license and permit requirements, the bidder is required to remit all applicable sales and use tax, occupational license fees, and contractors/subcontractors license fee in accordance with City ordinances and codes. In accordance with Section 39-3-5 of Sate Code, any non-Alabama bidders must submit a written opinion from an attorney stating the amount and criteria, if any, of local preference granted by law to non-resident businesses in his state of residence. Questions regarding business license and applicable taxes may be directed to the Revenue Office at (334) 501-7239.

Award of the contract, if to be awarded, will be made within thirty (30) calendar days after opening of bids and will be to the lowest responsible bidder whose proposal complies with the requirements of the Invitation to Bid. Should no award be made within the thirty (30) days, all proposals will be rejected unless the successful bidder agrees in writing to a stipulated extension in the time limit for award. The successful bidder will be notified by letter, mailed to the address shown on his proposal, that his bid has been accepted and that he has been awarded the contract.

The City of Auburn believes fully in equal opportunity in the provision of supplies, equipment, construction and services. Positive steps should be taken to assure small businesses, minority businesses and women-owned businesses are given opportunities to provide the above-mentioned services or materials when economically feasible. In the case of construction projects, the City of Auburn shall rely on individuals or firms seeking to do business with the City of Auburn to ensure that such above-mentioned businesses are given ample opportunity to participate on a sub-contractual basis.

The contractor agrees in all events to use materials, supplies and products manufactured, mined,

processed or otherwise produced in the United States or its territories if the same are available at reasonable prices. If the contractor determines that said items are not available at a reasonable price, the contractor must first contact the City of Auburn and obtain approval for the use of other materials, supplies and products. In the event the contractor breaches the agreement to use domestic products, and domestic products are not used, there shall be a downward adjustment in the contract price equal to any realized savings or benefits to the contractor.

Please note that the City of Auburn has a mandatory Partial Payment Request form that must be completed and submitted by the contractor before payment is considered. A copy of the required form is included in the "Information to Bidders". Payments are mailed on each Friday of the month. Pay requests must be reviewed and approved by the appropriate City representative (architect, if applicable, inspector, project manager and department head) and received by Accounts Payable at least seven (7) days prior to the scheduled mailing date. The City of Auburn will process only one invoice per month for partial payment to the contractor. If you have any questions concerning billing, contact our accounts payable office at 334.501.7237 or 334.501.7238.

The Contractor will be required to provide certificates of insurance showing that it carries, or has in force, automobile liability insurance, general liability insurance and workers' compensation insurance. Limits of liability for automobile liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability and explosion, collapse and underground hazards (X,C,&U). If any of the liability insurance coverages are on a claims-made basis, the Contractor will maintain coverage in force for a period of two (2) years following completion of the work specified in the agreement at the limits specified in this paragraph. Workers' compensation insurance shall provide statutory workers' compensation coverage and employers' liability coverage with limits of, at a minimum, \$500,000.00 each accident, \$500,000.00 disease- each employee and, \$500,000.00 disease – policy limit. The Contractor will be responsible for the payment of any deductibles or self-insured retentions. The Contractor's insurance is primary. If the Contractor carries higher coverage limits, the higher coverage limits will apply.

The certificate of insurance shall provide the City of Auburn, Alabama (City) with thirty (30) days written notice of cancellation of any of the coverage named in said certificate and waivers of subrogation in favor of the City for each of the coverages named on said certificate.

The City will be named as additional insured under the Contractor's general liability insurance and automobile liability insurance policies.

The Contractor shall require certificates of insurance from subcontractors. Subcontractors will

carry limits of insurance equal to or greater than those carried by the Contractor. These certificates shall evidence waivers of subrogation in favor of the Contractor and the City, and shall be made available to the City upon request.

At the City's discretion, the Contractor may be required to have in force builder's risk coverage and/or higher liability limits than that mentioned above and/or broader coverage than normally carried by the Contractor.

The Contractor agrees to indemnify, hold harmless, and defend the City, its officials, representatives, agents, servants, and employees from and against any and all claims, actions, lawsuits, damages, judgments, liability and expense, including attorneys' fees and litigation expenses, in whole or in part arising out of, connected with, or in any way associated with the activities of the Contractor, its employees, or its sub-contractors in connection with the work to be performed under this contract. This obligation survives the payment of any losses by the Contractor's insurance company.

Legal action arising from the performance of this contract will be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama – Eastern Division located in Opelika, Alabama. The contract will be interpreted according to the laws of the State of Alabama.

Questions concerning insurance coverage may be directed to the Risk Manager, McCarthy Autry at 334.501.7243.

CITY OF AUBURN, ALABAMA

Gracie Nash  
Finance Information Officer

FOR SPECIFIC INFORMATION CONCERNING THIS PROJECT, PLEASE CONTACT **JUSTIN FOSTER** AT 334.501.7390.



**Project Manual**

**Clark Avenue  
FY Community Development  
Block Grant (CDBG) Resurfacing  
Project**

**Project Manager: Justin Foster, 334.501.7390**

**City of Auburn  
Engineering Services Department  
161 N. Ross Street  
Auburn, Alabama 36830**

**NOT FOR BIDDING PURPOSES**

**CLARK AVENUE  
FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

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carry limits of insurance equal to or greater than those carried by the Contractor. These certificates shall evidence waivers of subrogation in favor of the Contractor and the City, and shall be made available to the City upon request.

At the City's discretion, the Contractor may be required to have in force builder's risk coverage and/or higher liability limits than that mentioned above and/or broader coverage than normally carried by the Contractor.

The Contractor agrees to indemnify, hold harmless, and defend the City, its officials, representatives, agents, servants, and employees from and against any and all claims, actions, lawsuits, damages, judgments, liability and expense, including attorneys fees and litigation expenses, in whole or in part arising out of, connected with, or in any way associated with the activities of the Contractor, its employees, or its sub-contractors in connection with the work to be performed under this contract. This obligation survives the payment of any losses by the Contractor's insurance company.

Legal action arising from the performance of this contract will be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama – Eastern Division located in Opelika, Alabama. The contract will be interpreted according to the laws of the State of Alabama.

Questions concerning insurance coverage may be directed to the Risk Manager, McCarthy Autry at 334.501.7243.

CITY OF AUBURN, ALABAMA

Gracie Nash  
Finance Information Officer

FOR SPECIFIC INFORMATION CONCERNING THIS PROJECT, PLEASE CONTACT **JUSTIN FOSTER** AT 334.501.7390

NOT FOR BIDDING PURPOSES

## INSTRUCTIONS TO BIDDERS

1. Contract Documents. The "Contract", "Invitation to Bid", the "Instruction to Bidders", the "Proposal", the "Base Bid", the "Special Conditions", the "Measurement and Payment", the "Performance Bond", and the "Labor and Material Payment Bond" make up the "Contract Documents". The Contractor must visit the location of the work and inform itself of all site conditions and make its own estimates of the facilities and difficulties attending the execution of the work.

2. Delivery of Proposals. Envelopes containing proposals must be sealed, addressed as follows, and sent First Class Mail or delivered to the Office of the City Manager, Auburn City Hall, 144 Tichenor Avenue, Suite 5, Auburn, Alabama 36830. The City assumes no responsibility for the delivery of a proposal by mail or otherwise.

The following note must be clearly shown on the face of the envelope:

**CLARK AVENUE  
FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

Bids will be opened on **Thursday, July 30, 2026, 2:00 p.m., local time.**

3. Omissions and Discrepancies. Should a bidder find ambiguities or discrepancies in, or omissions from, the Drawings or Contract Documents, or should he be in doubt as to their meaning, he must at once notify the Engineer, who may send a written instruction to all bidders.

4. Acceptance or Rejection of Proposals. The City reserves the right to reject any or all Proposals. Without limiting the generality of the foregoing, any Proposal which contains incomplete, obscure or irregular material or information may be rejected; any Proposal which omits a Proposal on any one or more items in the price sheet may be rejected; any Proposal in which unit prices are omitted, or in which unit prices are obviously unbalanced, may be rejected; any Proposal accompanied by an insufficient or irregular Proposal bond, certified or cashier's check may be rejected.

5. Proposal Bond. All Proposals shall be accompanied by a Proposal bond or a certified or cashier's check upon a national or state bank, drawn and make payable to the order of the City of Auburn, Alabama. The Proposal bond or check must be enclosed in the same envelope with the Proposal. The amount of the Proposal bond or check will be at least five percent (5%) of the amount of Proposal (**not to exceed \$10,000.00**). All such Proposal bonds or checks will be returned to the respective bidders within ten (**10**) days after Proposals are opened, except those which the City elects to hold until the successful bidder has executed the Contract. Thereafter all remaining Proposal bonds and checks, including the Proposal bond or check of the successful bidder, will be returned within ten (**10**) days.

6. Acceptance of Proposals and Its Effect. All Proposals shall be Irrevocable for a period of thirty **(30)** days after proposal opening. Within thirty **(30)** days after the opening of the Proposals, the City of Auburn will act upon them. The acceptance of a proposal will be a notice in writing signed by a duly authorized representative of the City of Auburn, and no other act of the City of Auburn shall constitute the acceptance of a Proposal. The acceptance of a Proposal shall bind the successful bidder to execute and perform the Contract and to be responsible for liquidated damages as provided in Paragraph 8. The rights and obligations provided for in the Contract shall become effective and binding upon the City of Auburn only upon its formal execution by the City of Auburn.

7. Time for Executing Contract and Damages for Failure to Execute. The bidder to whom the award is made shall enter into a written contract on the form included in the proposal, plans, and specifications, furnish a performance bond and payment bond executed by a surety company duly authorized and qualified to make such bonds in the state of Alabama in the amount required in Item 13 and provide evidence of insurance as required by the bid documents within the period specified or, if no period is specified, within 15 days after the prescribed forms have been presented to him or her for signature. If extenuating circumstances prevail, the awarding authority may grant an extension in time not exceeding five days for the return of the contract, required bonds and required evidence of insurance. Failure or neglect to do so shall constitute a breach of the agreement effected by the acceptance of the Proposal. The damages to the City for such breach shall include loss from interference with its construction program and other items whose accurate amount will be difficult or impossible to compute. The amount of the Proposal bond or certified or cashier's check accompanying the Proposal of such bidder shall be retained by the City of Auburn, Alabama as liquidated damages for such breach. In the event any bidder whose Proposal shall be accepted shall fail or refuse to execute the Contracts hereinbefore provided, the City Manager of the City of Auburn may, at his option, determine that such bidder has abandoned the Contract and thereupon the City shall be entitled to liquidated damages as above provided.

8. Determination of Low Bidder. Except where the City exercises the right reserved herein to reject any or all proposals, the Contract will be awarded by the City to the bidder who has submitted the lowest Proposal determined by the sum of the following.

For a Lump Sum Proposal:

- Base Proposal;
- Algebraic sum of alternatives elected by City after opening of Proposals;
- Amount of unit price work based on quantities given in proposal form or estimated by City or Engineer;
- Amount of management fees called for in Proposal.

NOT FOR BIDDING PURPOSES

For a Unit Price Proposal:

Sums of unit price work based on quantities given in schedule;  
Algebraic sum of alternatives elected by City after opening of Proposals;  
Amount of management fees called for in Proposal.

The City reserves the right to accept or not accept any or none of the additive alternates as it determines is within its project budget. If an alternate bid is accepted, the base bid will be modified by that amount. Example: If Additive Alternate No. 1 is accepted by the City, then the total of Additive Alternate No. 1 plus the Base Bid shall be used to determine the apparent low bidder. If no Additive Alternate is accepted by the City, then only the Base Bid shall be used to determine the apparent low bidder.

9. Time for Beginning and Completing the Work. The Contractor shall include in the construction schedule an allowance for adverse weather based on the National Oceanic and Atmospheric Administration (NOAA) 30-year climatological normals for precipitation as recorded at Auburn University Regional Airport (KAUO), Auburn, Alabama.

No time extension will be granted for weather conditions at or below these established normals.

A time extension may be considered only when actual precipitation exceeds normal conditions, defined as either:

- (1) total monthly precipitation exceeding the NOAA normal by more than ten percent (10%), or
- (2) the number of days with measurable precipitation ( $\geq 0.01$  inches) exceeding the NOAA average by more than two (2) days.

Any request for extension of time shall be supported by weather data from the designated station and must demonstrate an impact to the critical path of the Work as shown in the approved construction schedule.

10. Prices. In case of discrepancy between the prices quoted in the Proposal in words and those quoted in figures, the words shall control. The prices are to include the furnishing of all materials, plant, equipment, tools, scaffolds, and all other facilities, and the performance of all labor and services necessary or proper for the completion of the work, except such as may be otherwise expressly provided in the Contract Documents.

11. Interpretations and Addenda. No oral interpretations shall be made to any bidder as to the meaning of any of the Contract Documents, or be effective to modify any of the provisions of the Contract Documents. Every request for an interpretation shall be made in writing, addressed, and forwarded to the City Manager of the City of Auburn, Alabama. All

requests must be submitted at least 48 hours before the date and time of the bid opening. Requests for interpretations will not be accepted after that time.

12. Postponement of Date for Presenting and Opening Proposal. The City reserves the right to postpone the date for presentation and openings of Proposals and will give notice by registered mail of any such postponement to each prospective bidder. Proposals shall be irrevocable for the period of any postponement of openings not to exceed thirty **(30)** days.

13. Bonds. Performance Bond will be required as follows: One hundred percent (100%) of the contract price. Labor and Material Bond will be required as follows: One hundred percent (100%) of the contract price.

14. Liquidated Damages. Time is of essence in this contract. The City will allow **(30)** consecutive calendar days from the start date established by the written notice to proceed for completion of the project, and the Contractor will be subject to payment of Liquidated Damages in the amount of \$1,850.00 per calendar day for each day the contract remains incomplete (considering additional time which may be allowed the Contractor by the Engineer for completion of Extra Work) after the time allowed in the contract.

15. Informalities. The City reserves the right to reject any and all Proposals and to waive any informality in the Proposals received.

16. Business Licenses. Successful bidder must have or must purchase all appropriate Auburn City Business Licenses and Permits before beginning work.

17. Fair Labor Standards Act (FLSA). The contractor must abide by the requirements of the Federal Labor Standards Provisions Act.

18. Supplier and Subcontractors. The low bidder must supply the names and addresses of major material suppliers and subcontractors before the Notice Award.

19. Progress Schedule. Within ten **(10)** days of delivery of the executed agreement by the City to the Contractor, Contractor shall submit to Engineer for approval a progress schedule indicating the starting and completion date of the various stages of the work and a preliminary schedule of shop drawings submissions. In addition, Contractor will submit a plan indicating his requirements for traffic control and pedestrian safety facilities.

20. Federal Immigration Law. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

NOT FOR BIDDING PURPOSES

21. Retainage. In accordance with Alabama State Code Section 39-2-12(c), retainage shall be withheld at a rate of not more than 5% of the estimated amount of work done and the value of materials stored on the site or suitably stored and insured off-site, and after 50% completion has been accomplished no further retainage shall be withheld.

22. Mandatory Pre-Bid Meeting. A **mandatory** pre-bid meeting will be held at 10:00 a.m. local time Tuesday, July 21, 2026, at the Engineering Services Department, located at 161 North Ross Street, Auburn, AL.

NOT FOR BIDDING PURPOSES

**PROPOSAL**

TO: CITY OF AUBURN, ALABAMA

Submitted: \_\_\_\_\_, 2026

The undersigned, as Bidder, hereby declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the plans and specifications for the work and contractual documents relative thereto; and has read all Special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed.

The Bidder proposes and agrees, if this proposal is accepted, to contract with the City of Auburn, Alabama, in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and labor necessary to and to complete

**CLARK AVENUE  
FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

in full and complete accordance with the shown, noted, described and reasonably intended requirements of the plans, specifications and contract documents, to the full and entire satisfaction of the City of Auburn, Alabama, with a definite understanding that no money will be allowed for extra work except as set forth in the attached General Conditions and Contract Documents, for the unit prices listed opposite each item in the attached schedule of estimated quantities and bid prices.

It is agreed that the description under each item, being briefly stated, implies, although it does not mention, all incidentals and that the prices stated are intended to cover all such work, materials and incidentals as constitute Bidder's obligations as described in the specifications and any details not specifically mentioned, but evidently included in the contract shall be compensated for in the item which most logically includes it.

The quantities for bid items listed on the proposal sheets are estimated quantities only for the purpose of comparing bids. Any difference between these estimated quantities and actual quantities required for construction shall not be taken as a basis for claims by the Contractor for extra compensation. Compensation will be based on the unit prices and actual construction quantities.

The Bidder further proposes and agrees hereby to commence the work with an adequate force, plant and equipment at the time stated in the notice to the Contractor from the Engineer to proceed and fully complete performance of the base bid work within thirty **(30)** or less consecutive calendar days from and after the date stated in said notice.

The undersigned further agrees that, in case of failure on his part to execute the said contract and the bonds within ten **(10)** consecutive calendar days after written notice being given of the

award of the contract, the check or bid bond in the amount of 5%, (not to exceed \$10,000.00) and the monies payable thereon, shall be paid into the funds of the City of Auburn, Alabama as liquidated damages for such failure; otherwise, the check or bid bond accompanying this proposal shall be returned to the undersigned.

Bidder's representation section: Bidder is familiar with all laws and regulations that may affect cost, progress, and performance of the work, including BABAA requirements.

Attached hereto is a certified or cashier's check on the \_\_\_\_\_

or bid bond for the sum of \_\_\_\_\_ dollars ( \_\_\_\_\_ )  
(5% of AMOUNT BID (not to exceed \$10,000.00))  
made payable to the City of Auburn, Alabama.

Base Bid: \_\_\_\_\_  
(in words)

TOTAL LUMP SUM BID PRICE: \$ \_\_\_\_\_

EXCEPTIONS: If "none", so state here: \_\_\_\_\_  
If any exceptions of Owner's specifications are offered, attach full explanations to this bid.

BY: \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

TITLE \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY \_\_\_\_\_

STATE \_\_\_\_\_

CONTRACTOR'S LICENSE NUMBER

TELEPHONE NUMBER

NOT FOR BIDDING PURPOSES

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound to the City of Auburn, Alabama hereinafter called "Obligee" or "City" in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which we hereby jointly and severally bind ourselves, successors and assigns. Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The Condition of the above obligation is such that whereas the Principal has submitted to the City a certain Proposal, attached hereto and hereby made a part hereof to enter into a Contract in writing, for the:

**CLARK AVENUE  
FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

THEREFORE,

- (a) If said Proposal shall be rejected, or in the alternative,
- (b) If said Proposal shall be accepted and the Principal shall execute and deliver the Contract attached hereto (properly completed in accordance with said Proposal) and shall furnish a bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall appear in all other respects perform the agreement created by the acceptance of said Proposal,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall in no way impaired or affected by an extension of the time within which the City may accept such Proposal; and said Surety does hereby waive notice of any such extension.

NOT FOR BIDDING PURPOSES

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
PRINTED NAME OF CONTRACTOR

\_\_\_\_\_  
PRINTED NAME OF PRINCIPAL

SEAL

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

SEAL

\_\_\_\_\_  
SURETY

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

NOT FOR BIDDING PURPOSES

Street: Clark Avenue

Section: North Donahue Drive - Spencer Avenue

**CLARK AVENUE**  
**FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**  
**BASE BID**

	DESCRIPTION	UNIT	QUANTITY	COST	TOTAL COST
1	424-A Superpave Bituminous Wearing Surface, 1/2 Inch Max Aggregate Size, ESAL Range C/D, 1.5 inches thick	Ton	330		
2	424-B Superpave Bituminous Binder Layer, Patching, 3/4 Inch Max Aggregate Size, ESAL Range C/D	Ton	50		
3	424-B Superpave Bituminous Binder Layer, Leveling, 1/2 Inch Max Aggregate Size, ESAL Range C/D	Ton	50		
4	Bike Symbols	Each	0		
5	Curb & Gutter/Valley Curb/Curb	Linear Feet	40		
6	Double Wing Inlet	Each	1		
7	Manhole Adjustment	Each	0		
8	Milling, 1.0 - 2.0"	Square Yard	3,924		
9	Pavement Markers, Class A-H, Type 2C	Each	35		
10	Pavement Markers, Class A-H, Type 2D	Each	0		
11	Removing Curb and Gutter	Linear Feet	40		
12	Removing Sidewalk	Square Yard	60		
13	Sidewalk, 4"	Square Yard	60		
14	Sidewalk, 6"	Square Yard	0		
15	Single-wing inlet tops	Each	0		
16	Sod	Square Yard	0		
17	Solid Temporary Traffic Stripe	Linear Feet	2,616		
18	Solid White Traffic Stripe, Class 2, Type A (5" Wide)	Linear Feet	0		
19	Solid Yellow Traffic Stripe, Class 2, Type A (5" Wide)	Linear Feet	2,616		
20	Temporary Traffic Control Markings	SF	224		
21	Traffic Control Legends, Class 2, Type A	Square Feet	137		
22	Traffic Control Markings, Class 2, Type A	Square Feet	224		

NOT FOR BIDDING PURPOSES

**TOTAL BASE BID FOR NORTH DONAHUE DRIVE - SPENCER AVENUE:** \_\_\_\_\_

\_\_\_\_\_  
**(IN WORDS)**

CONTRACTOR NAME:

---

COMPANY NAME:

---

ADDRESS:

---

MAILING ADDRESS:

---

CITY/STATE/ZIP CODE:

---

TELEPHONE NUMBER:

---

FAX NUMBER:

---

**NOT FOR BIDDING PURPOSES**

City of Auburn

CONSTRUCTION CONTRACT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
by and between \_\_\_\_\_ hereinafter called the CONTRACTOR and  
the City of Auburn, Alabama, hereinafter called the CITY;

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the WORK as defined in the Contract Documents (defined in Section 4 hereof). The WORK is generally described as follows:

Resurfacing of various streets within the City of Auburn.

2. The PROJECT, of which the WORK under the Contract Documents is a part, is generally described as follows **CLARK AVENUE FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT** (the "PROJECT").
3. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein. Prior to commencing work, the CONTRACTOR shall have obtained a City of Auburn Business License, all required insurance and any required permits. If the CONTRACTOR does not obtain the required Business License, the CITY may withhold payment to CONTRACTOR until the Business License is obtained.
4. All time limits for milestones, if any, substantial completion, and completion and readiness for final payments as stated in the Contract Documents are of the essence.

The CONTRACTOR will commence the work required by the PROPOSAL from the date of the NOTICE TO PROCEED and will complete the same within **thirty (30) consecutive calendar days**, unless the period for completion is extended otherwise by the CITY.

The CONTRACTOR shall only take instructions from the person or persons who are authorized in writing by the CITY to give the same.

If the CONTRACTOR is delayed at any time in the progress of the work by labor disputes, fire, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond the CONTRACTOR's control and without the fault or negligence of CONTRACTOR, the CONTRACTOR shall prepare and submit to the CITY within five (5) calendar days of the occurrence a written report of its assessment of the occurrence and any proposed amendment to the Term. The CONTRACTOR shall proceed with due diligence to alleviate any such delay and shall continue in the performance of its

NOT FOR BIDDING PURPOSES

obligations hereunder. The CITY may determine, in its sole discretion, after the receipt of such notice of delay from the CONTRACTOR, whether to terminate this Agreement in accordance with Article 10 hereof or extend the Term by Change Order for such time as the CITY may determine.

5. The Contract Documents consist of:

1. This Contract Document
2. Appendix A – Invitation to Bid
3. Appendix B – Instructions to Bidders
4. Appendix C – Proposal/Base Bid
5. Appendix D – Special Conditions
6. Appendix E – Measurement and Payment
7. Appendix F – Performance Bond
8. Appendix G – Labor and Material Payment Bond

The intent of the Contract Documents is to include all items necessary for the execution and completion of the Work. The Contract Documents are complementary, and what is required by anyone shall be deemed to be required by all. In the event of any conflict between the terms of this Agreement and the other Contract Documents, the terms of this Agreement shall control.

6. In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract Documents, and any data and reference items identified in the contract Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7. The CONTRACTOR shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents in the Contract Sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The CONTRACTOR shall submit Applications for Payment in accordance with Section 01 2900 of the Special Provisions and City of Auburn Finance Department policies and procedures.

NOT FOR BIDDING PURPOSES

The CITY will pay the CONTRACTOR in the manner and at such times as set forth in the Contract Documents.

8. If the CONTRACTOR is of the opinion that any services requested hereunder are beyond the scope of the Work as provided in the Contract Documents, the CONTRACTOR shall promptly notify the CITY in writing of such opinion and the reasons for the same, with specific references to the Contract Documents.
9. No additional services beyond the scope of the Work as provided in the Contract Documents shall be performed by the CONTRACTOR unless the CITY shall, in writing, have specifically directed such services to be performed, and a Change Order (hereafter defined) shall have been signed by the CITY and the CONTRACTOR. In the event of noncompliance with the foregoing, the CONTRACTOR shall neither have nor make any claim for additional compensation by reason of a claim for additional services.
10. The term "**Change Order**" as used herein is a written order to the CONTRACTOR, issued and signed by the CITY after execution of this Agreement, authorizing a change in the Work. Unless the CONTRACTOR requests a modification in such Change Order, the CONTRACTOR shall sign the Change Order and return a copy thereof to the CITY within ten (10) business days after it has received the same. The CONTRACTOR shall have ten (10) business days from its receipt of a Change Order within which to request a modification thereto. Failure of CONTRACTOR to respond to a Change Order within such ten (10) day period shall be deemed to signify CONTRACTOR's acceptance of such Change Order as if CONTRACTOR had signed the same without modification. If CONTRACTOR requests a modification of a Change Order, the CITY shall have ten (10) business days from receipt of such request to accept such modification in writing. If not so accepted, such request is deemed to be rejected.
11. The CONTRACTOR and the CITY recognize that time is of the essence as stated in Section 4 above and that CITY will suffer financial and other losses if the WORK is not completed and milestones, if any, are not achieved within the times specified in the Contract Documents, plus any extensions thereof allowed in accordance with the Agreement. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by CITY if the WORK is not completed on time.

Accordingly, instead of requiring any such proof, the CONTRACTOR and the CITY agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay CITY the amount of **One Thousand Eight Hundred Fifty Dollars (\$1,850.00)** per day for each Day occurring after the expiration of the Contract Time until CONTRACTOR achieves Substantial Completion of the PROJECT.

12. This Agreement is binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
13. The CONTRACTOR is required to provide certificates of insurance showing that it carries or has in force, automobile liability insurance, general liability insurance, and workers' compensation insurance. Limits of liability for automobile liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability and explosion, collapse, and underground (X, C & U) hazards. If the general liability insurance coverage is on a claims-made basis, the CONTRACTOR will maintain coverage in force for a period of two (2) years following completion of the work specified in the agreement. Workers' compensation insurance shall provide statutory workers' compensation coverage and employers' liability coverage with limits of, at a minimum, \$500,000.00 each accident, \$500,000.00 disease- each employee and \$500,000.00 accident, \$500,000.00 disease – policy limit. The CONTRACTOR will be responsible for the payment of any deductibles or self-insured retentions. The CONTRACTOR'S insurance will be primary. If the CONTRACTOR carries higher coverage limits than those specified above, the higher coverage limits apply.
14. The certificate of insurance will provide the CITY with thirty (30) days' written notice of cancellation of any of the coverages listed on the certificate of insurance. The certificate of insurance will evidence waivers of subrogation in favor of the CITY for the coverages listed on the certificate of insurance.
15. The CITY will be named as additional insureds under the CONTRACTOR'S automobile liability insurance, general liability insurance and umbrella liability insurance coverages. The CITY will be a named insured under the builder's risk insurance coverage.
16. The CONTRACTOR shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the CONTRACTOR. These certificates shall evidence waivers of subrogation in favor of the CONTRACTOR and the CITY, and shall be made available to the City before the Letter of Notice to Proceed being given.
17. The CONTRACTOR agrees to advise fully all of its employees and others working for CONTRACTOR concerning environmental, safety and health procedures required by applicable state and federal law, regulation or order or required by the CITY; and to take the necessary steps to assure that such procedures are complied with.

18. The CONTRACTOR agrees to indemnify, hold harmless, and defend the CITY, its officials, representatives, agents, servants, and employees from and against any and all claims, actions, lawsuits, damages, judgments, liability and expense, including attorney's fees and litigation expenses, in whole or in part arising out of, connected with, or in any way associated with the activities of the CONTRACTOR, its employees, or its sub-contractors in connection with the work to be performed under this contract. This obligation survives the payment of any loss by the CONTRACTOR'S insurance carrier.

19. The CONTRACTOR is required to be compliant with the Beason-Held Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (Code of Alabama (1975) § 31-13-9) as amended May 16, 2012 regarding employment practices. Documentation of enrollment in E-Verify must be included with the contract.

By signing this Agreement, the CONTRACTOR affirms for the duration for the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed to be in breach of the Agreement and shall be responsible for all damages resulting therefrom.

20. Any subcontractor who works on the PROJECT must agree to comply with the terms of this Agreement and be enrolled in E-Verify. By signing this Agreement, the CONTRACTOR acknowledges understanding of this requirement and represents that the CONTRACTOR has in place a system for assuring compliance.

21. By signing this agreement, the CONTRACTOR hereby attests that it is currently in compliance with Alabama Legislative Act 2016-312 (the "Act"). The CONTRACTOR hereby agrees to maintain compliance with the Act during the term of this Agreement. The CONTRACTOR understands and agrees that should it violate the Act during the term of this agreement, such violation will be an Event of Default, giving the CITY the right to immediately terminate this Agreement and to seek damages, including, but not limited to, consequential, special, indirect damages and liquidated damages.

22. Legal action arising from the performance of this contract will be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama – Eastern Division located in Opelika, Alabama.

23. This Agreement does not, and shall not, be construed to create any partnership or agency whatsoever.

24. Failure to insist upon strict compliance with any provision hereof shall not be deemed a

waiver of such provision or any other provision hereof.

25. This Agreement may not be modified except by Change Order or written Amendment executed by the parties hereto.
26. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.
27. The CONTRACTOR may not assign this agreement without the written permission of the City.
28. This Agreement shall be binding on the parties hereto and their respective successors, assigns and legal representatives.

**NOT FOR BIDDING PURPOSES**

**IN WITNESS, THEREOF** the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies each of which shall be deemed an original on the date first above written.

(SEAL)

ATTEST:

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

(SEAL)

ATTEST:

BY: \_\_\_\_\_

ASSISTANT CITY CLERK

THE CITY OF AUBURN, ALABAMA  
A Municipal Corporation

BY: \_\_\_\_\_

ITS CITY MANAGER

**NOT FOR BIDDING PURPOSES**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_, hereinafter called the "Principal," and \_\_\_\_\_, hereinafter called the "Surety," are held and firmly bound unto the City of Auburn, Alabama, herein after called the "Obligee," in the penal sum of \_\_\_\_\_ for the payment of which we bind ourselves, heirs, executors, administrators, successors, and assigns for the faithful performance of a certain written contract dated the \_\_\_\_\_ day of \_\_\_\_\_, 2026, entered into between the Principal and the Obligee for the

**CLARK AVENUE  
FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

a copy of which said contract is incorporated herein by reference and is made a part hereof as if fully copied herein.

NOW, THEREOF, the condition of this obligation is such that the Principal shall faithfully perform the terms and conditions of the contract in all respects on its part, and shall fully pay all obligations incurred in connection with the performance of such contract on account of labor and materials used in connection therewith, and all such other obligations of every form, nature, and character, and shall save harmless the City from all and any liability of every nature, kind and character which may be incurred in connection with the performance or fulfillment of such contract or other such liability resulting from negligence or otherwise on the part of such Principal, and further shall save harmless the City from all cost and damage which may be suffered by reason of the failure to fully and completely perform said contract and shall fully reimburse and repay the City for all expenditures of every kind, character and description which may be incurred by the City in making good any and every default which may exist on the part of the Principal in connection with the performance of said contract; and further that the Principal shall pay all lawful claims of all persons, firms, partnerships, or corporations and shall give them a direct right of action against the Principal and Surety under this obligation; and further that no suit, action, or proceedings by reason of any default whatever shall be brought on this bond within one year after the date on which the final payment on the contract falls due. Any alterations or additions which may be under the contract, or in the work to be done under it, or the giving by the City of any extension of time for the performance of the contract or any other forbearance on the part of either the City or the Principal shall not, in any way release the Principal and Surety, or either of them, their heirs, executors, administrators, successors, or assigns from their liability hereunder. Notice to the Surety of any such alterations, extensions or forbearance is expressly waived. This obligation shall remain in full force and effect until the performance of all covenants, terms and conditions herein stipulated and after such performance, it shall become null and void.

**NOT FOR BIDDING PURPOSES**

IN TESTIMONY WHEREOF witness the hands and seals of the parties hereto on this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
SIGNATURE OF PRINCIPAL

WITNESS TO SIGNATURE  
OF PRINCIPAL:

\_\_\_\_\_  
PRINTED NAME OF PRINCIPAL

\_\_\_\_\_  
BY

\_\_\_\_\_  
TITLE

WITNESS TO SIGNATURE  
OF SURETY:

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
BY

\_\_\_\_\_  
TITLE

Countersigned:

\_\_\_\_\_  
Resident Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**IMPORTANT:**

**Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.**

**NOT FOR BIDDING PURPOSES**

**LABOR AND MATERIALS PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_ as Surety are held and firmly bound unto the City of Auburn, Alabama, hereinafter called the "Obligee" or "City", in the penal sum of \_\_\_\_\_ lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with said Obligee, dated \_\_\_\_\_, 2026, hereinafter called the "Contract" for the

**CLARK AVENUE  
FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

which Contract and the specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal and all Subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Principal and of such Subcontractors shall promptly make payment to all persons supplying him or them with labor, materials, feed-stuffs or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or additions to said Contract, and for the payment of reasonable attorney's fees, incurred by the claimant or claimants in suits or said bond, then the above obligation shall be void; otherwise to remain in full force and effect. PROVIDED, however, that this bond is subject to the following conditions and limitations:

(a) Any person, firm or corporation that has furnished labor, materials, feed-stuffs or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the Principal and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the county in which the work provided for in said Contract is to be performed or in any county in which said Principal or Surety does business. Such right of action shall be asserted in a proceedings instituted in the name of the claimant or claimants for his or their use and benefit against said Principal and Surety or either of them (but not later than one year after the final settlement of said Contract) in which action such claim or claims shall be adjudicated and judgment entered thereon.

(b) The Principal and Surety hereby designate and appoint \_\_\_\_\_ as the agent of each of them to receive and accept service of process or other pleading issued or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the Principal and/or Surety.

(c) The Surety shall not be liable hereunder for damage or compensation recoverable under Workers' Compensation or Employer's Liability Statute.

(d) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any

suit, action or proceedings thereon that is instituted later than one year after the final settlement of said Contract.

(e) This bond is given pursuant to the terms of Act No. 39, General Laws of Alabama, approved February 8, 1935, entitled "An Act to Further Provide for Bonds of Contractors on State and Other Public Works and Suits Thereon."

Executed in three (3) counterparts

SIGNED, SEALED AND DELIVERED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2026.

\_\_\_\_\_  
PRINTED NAME OF CONTRACTOR

WITNESS TO SIGNATURE  
OF PRINCIPAL:

\_\_\_\_\_  
PRINTED NAME OF PRINCIPAL

\_\_\_\_\_  
BY

\_\_\_\_\_  
TITLE

WITNESS TO SIGNATURE  
OF SURETY:

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
BY

\_\_\_\_\_  
TITLE

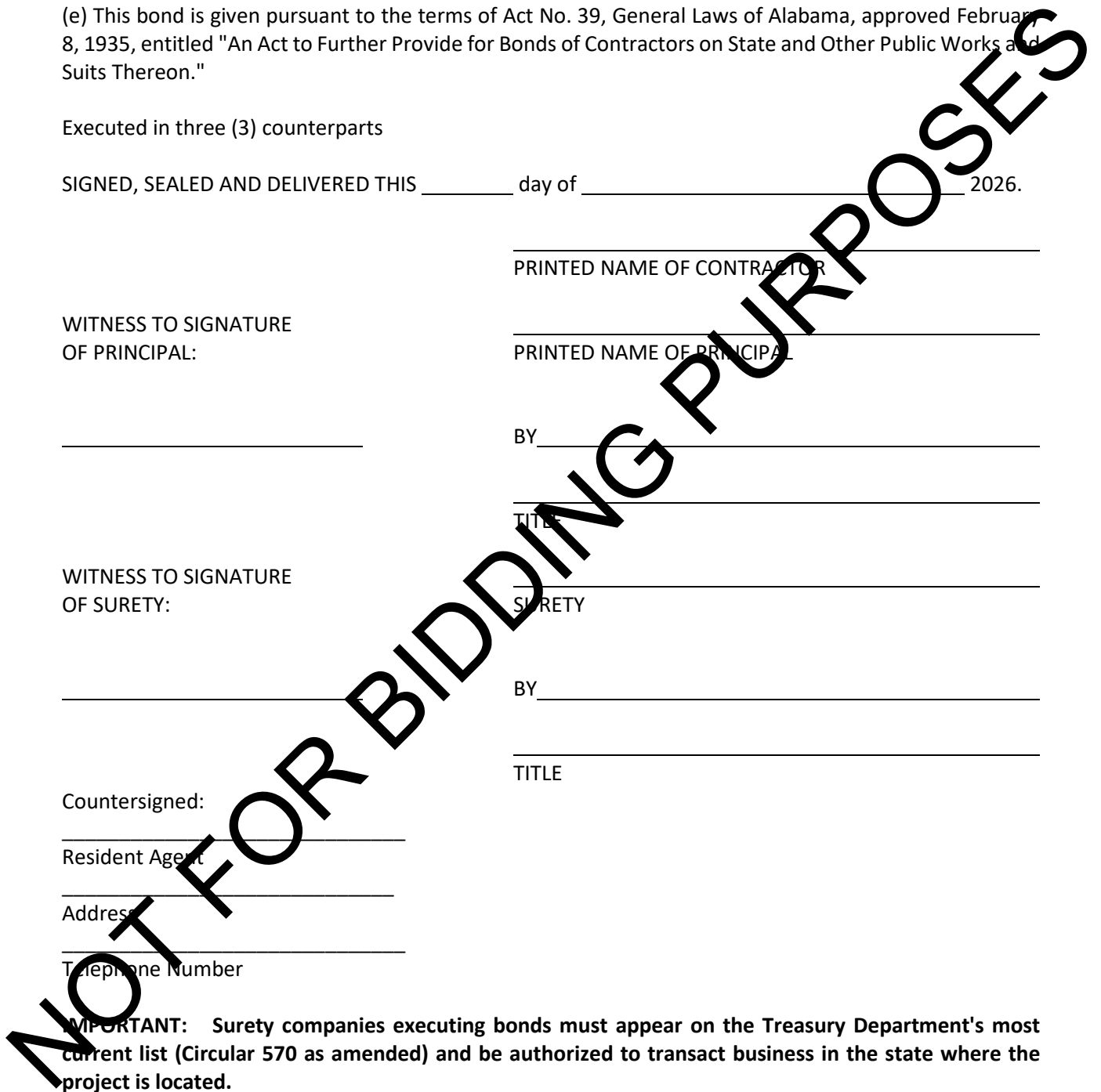
Countersigned:

\_\_\_\_\_  
Resident Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.



**SPECIAL CONDITIONS**

**CLARK AVENUE**

**FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) STREETS RESURFACING PROJECT**

**1. PROJECT DESCRIPTION:**

This project consists of resurfacing Clark Avenue from North Donahue to the intersection of Spencer Avenue within the City of Auburn. All work will be confined within the right-of-way and easements. The contractor is advised to take special care not to cause any damage to property or hindrance to residents. No work will be allowed after dark or before 7:00 AM. Residents will always have adequate ingress and egress.

**2. TIME OF COMPLETION/WARRANTY:**

The contractor shall commence work within 10 days after the written "Notice to Proceed" and shall complete the bid work in **30 consecutive calendar days**. The contractor shall warrant labor, materials, and workmanship for a period of three years from date of substantial completion.

**3. LIQUIDATED DAMAGES:**

Liquidated damages as specified in the general conditions are hereby mutually fixed and agreed upon at the rate of one thousand eight hundred fifty dollars (\$1,850.00) per calendar day of delay past the contract completion date.

**4. LICENSE FEE:**

The Contractor will be required to obtain a license from the City of Auburn for performing the work prior to beginning the project. The license fee will be one-fourth of one percent (1/4 of 1%) of the contract amount.

**5. WORK TO BE DONE:**

The City reserves the right to add or delete streets or street segments for the purpose of budgetary control or due to extraordinary and unforeseen circumstances. The City will use the unit prices given on streets bid in the project for determining the cost of resurfacing any additional streets. In cases where multiple prices are given, the unit price will be averaged and used for the pay item.

Quantities for sections of sidewalk to be removed and replaced are included on each street segment and the areas will be marked by the inspector prior to work beginning. The contractor is responsible for ensuring compliance with PROWAG for cross slopes on ramps, sidewalks, and

**NOT FOR BIDDING PURPOSES**

street crossings. Additional areas may be identified by the inspector so the contractor is advised to walk each street to review the complete scope of sidewalk removal and replacement. The contractor will be required to provide accommodations for pedestrians during the removal and replacement of sidewalk in accordance with PROWAG.

**6. PROOF ROLLING:**

After the base has been shaped and tested for density, the roadway may be proof rolled if directed by the Engineer.

A loaded dump truck (minimum of 20,000 pounds per rear axle) will traverse the roadway from one end to the other at walking speed. Areas of weak base or subgrade will be removed and re-compacted.

The Contractor is required to proof roll areas designed prior to calling for the project inspector to inspect the proof rolling process. There will be no pay item for such work.

**7. DEFINITIONS:**

The following definition explains the width of binder/wearing surface:

Curb to Curb: This implies the overlaying will be laid from the face of the curb to face of the curb. Curb meaning the vertical face.

Gutter to Gutter: This implies that the overlaying will stop at the edge of the concrete gutter. No asphalt will be allowed over into the gutter or on the vertical face of the curb.

**8. SAFETY:**

In accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to the normal working hours. The contractor should take all necessary precautions to insure safety of the jobsite at all times.

**9. ENVIRONMENTAL:**

The Contractor is cautioned that part of this work is in environmentally sensitive areas. The Contractor must promptly restore disturbed areas, keep debris out of streams, and use construction methods to minimize erosion. Under no circumstance shall sewage or other contaminants be allowed into the streams. The Contractor will be solely responsible for any violation of environmental laws and penalties or fines that are imposed. There will be no

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separate payment for establishing and maintaining erosion and sedimentation control measures.

**10. GOVERNING DOCUMENTS:**

All work, testing, submittals, and materials shall be in accordance with the City of Auburn standard details, Specifications, Engineering Design and Construction Manual, Alabama Department of Transportation Specifications, Water Resource Management Department Design and Construction Manual, and the Proposed Guidelines latest version of the Public Rights-of-Way Accessibility Guidelines issued by the United States Access Board, as applicable. The contractor is required to have all of the applicable design standards on the job at all times. The successful contractor may request copies of the City of Auburn standards prior to the start of construction, if needed.

**11. WORK HOURS**

No work will be allowed before 7:00 a.m. or after daylight hours, unless otherwise approved by the Project Manager. No traffic is to be detoured without the consent of the Project Manager. The Contractor will perform no work the day before or during any Auburn University athletic event or graduation. The project site must be cleaned and opened for traffic as designated by the Project Manager or Project Inspector. If deemed necessary by the City, detours and/or lane closures during peak times may be prohibited. All property owners with driveways that fall within the work zone shall be notified by the Contractor of the operating procedures of the traffic control plan prior to work beginning. Ingress and egress must be maintained at all times for each property falling within the construction zone. In the event the Contractor should require no access for a limited period of time, immediate notice should be given to the property owners.

**12. NOTE:**

- A. Thickness of wearing surface placed identifies the compacted thickness.
- B. All asphalt tie-ins shall be milled down to a depth of two inches (No separate pay item will be provided for this work).
- C. Mobilization costs shall be considered a subsidiary item of the wearing surface.

**STREET STRIPING:**

Unless otherwise noted:

- a. All street striping and markings will be in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition.

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- b. All legends and traffic control markings shall meet Alabama Department of Transportation Specifications for Highway Construction, Section 700 Thermoplastic, Class II, Type A.
- c. Striping shall be Class II, Type A, Thermoplastic Stripes.
- d. Marking shall consist of thermoplastic reflector arrows, stop bars, crosswalks, and channelizing lines and shall be in accordance with the U. S. Department of Transportation, Federal Highway Administration Manual on Uniform Traffic Control Devices, Latest Edition.
- e. Unsatisfactory striping performed by the Contractor must be removed and replaced in compliance with these specifications. No payment will be made for removal or replacement of the Contractor's unsatisfactory striping.
- f. The Contractor is responsible for maintaining all temporary striping until the permanent striping is placed.

**14. PROJECT BUDGET:**

The City reserves the right to remove streets from the project if necessary to meet budget constraints.

**STREETS TO BE RESURFACED:**

**Clark Avenue from North Denahue to Spencer Avenue:** The work to be done shall consist of all labor, equipment and materials needed to clean, tack, mill, remove and replace curb and gutter, patching, leveling, place 1.5" of 424A wearing surface, and other incidental items to completely resurface Clark Avenue.

**15. PROJECT SCHEDULE:**

The Contractor shall provide a schedule and applicable traffic control plans to the Project Manager prior to the preconstruction meeting. The schedule shall include applicable dates and milestones. The traffic control plans shall outline lane closures, expected delays to vehicular and pedestrian traffic, and other information regarding signage.

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**MEASUREMENT AND PAYMENT**

**CLARK AVENUE**

**FY 26 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RESURFACING PROJECT**

**01 424-A SUPERPAVE BITUMINOUS WEARING SURFACE, ½ INCH MAX AGGREGATE SIZE, ESAL RANGE C/D, 1.5 INCHES THICK:**

Work under this item shall include all labor, materials, and equipment necessary for the placement of Superpave Bituminous Wearing Layer in accordance with Alabama Department of Transportation standard specifications. Work shall include, but not be limited to, hauling, placement, compaction, testing, tack coat, and any other incidental items of work. Driveway tie-ins will also be included in this bid item.

Measurement shall be based on tons of in place Improved Bituminous Wearing layer. Payment shall be based on the unit price bid for Superpave Bituminous Wearing Layer, ½" maximum aggregate size in accordance with Alabama Department of Transportation Specifications. Truck tickets will be required for payment verifying quantity, type mix, placement, and project. Project personnel must be present to verify delivery of the mix.

**02 424-B SUPERPAVE BITUMINOUS BINDER LAYER, PATCHING/ALLIGATOR REPAIR, ¾ INCH MAX AGGREGATE SIZE, ESAL RANGE C/D:**

Work under this item shall include all labor, materials and equipment necessary for the complete reconstruction of all alligator areas within the existing streets. This work includes saw cutting, excavation, removal of existing materials, compaction, tacking and the placement of 424B and other incidental work. The areas to be reconstructed will be marked prior to starting work by the project manager. The thickness shall be five inches, unless otherwise noted.

Measurement shall be based on tons of in place Improved Bituminous Binder layer, Patching/Alligator Repair. Payment shall be based on the unit price bid for Superpave Bituminous Binder Layer, Patching/Alligator Repair ¾" maximum aggregate size in accordance with Alabama Department of Transportation Specifications. Truck tickets will be required for payment verifying quantity, type mix, placement, and project. Project personnel must be present to verify delivery of the mix.

**03 424-B SUPERPAVE BITUMINOUS BINDER LAYER, LEVELING ½ INCH MAX AGGREGATE SIZE, ESAL RANGE C/D:**

Work under this item shall include all labor equipment and materials necessary for the complete placement of 424B binder, leveling. Included in this work is the tack, compaction and other incidental work. The placement of the leveling shall be as directed by the Project Manager.

Measurement shall be based on tons of in place Improved Bituminous Binder layer, Leveling. Payment shall be based on the unit price bid for Superpave Bituminous Binder Layer, Leveling ½"

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maximum aggregate size in accordance with Alabama Department of Transportation Specifications. Truck tickets will be required for payment verifying quantity, type mix, placement, and project. Project personnel must be present to verify delivery of the mix. Binder will also be included in this pay item.

**04 BIKE SYMBOLS:**

Work under this item shall include all labor, equipment, and materials necessary for the complete installation of "BIKE SYMBOLS", which are a form of traffic control markings. Work shall be in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition or the Manual on Uniform Traffic Control Devices (MUTCD) and the American Association of State Highway and Transportation Officials (AASHTO). Work shall include placement of new markings at standard spacing unless otherwise indicated.

Measurement shall be based on each bicycle symbol, which consist of approximately 5.48SF of Traffic Control Markings, Class 2, Type A placed. Payment shall be based on the unit price bid for Bike Symbol.

**05 CURB AND GUTTER/VALLEY CURB/CURB**

Work under this item shall include all labor, materials, and equipment necessary for the complete placement of standard curb and gutter, valley curb, or curb in accordance with City of Auburn Standard Details. Included in this item will be the required crushed aggregate base under the curb and gutter to the widths and depths as shown on City of Auburn standard details. There will not be a separate pay item for the aggregate base; it will be considered incidental to the work item. The work shall also include grading, forming, pouring, and finishing of concrete for the completion installation of curb and gutter.

Measurement shall be based upon linear feet of curb and gutter, valley curb, or curb installed. Payment shall be based upon the unit price bid for Curb and Gutter/Valley Curb/Curb.

**06 DOUBLE WING INLET:**

Work under this item shall include all labor, equipment, and materials necessary for the removal of existing structures and the construction of a new double-wing inlet per City of Auburn specifications.

Measurement will be by each completed inlet. Payment shall be based upon the unit price bid for double-wing inlet.

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**07 MANHOLE ADJUSTMENT:**

Manhole adjustment shall include all labor, materials and equipment necessary for the complete adjustment of manhole rings and covers to the finished grade of the proposed paved street. All work shall be done per City of Auburn Standard Specifications.

Measurement shall be by each manhole adjustment. Payment shall be based upon the unit price bid for manhole adjustment.

**08 MILLING, 1.0 - 2.0”:**

Work under this item shall include all labor, equipment, and materials necessary for the milling on certain streets to the depth specified by the base bid sheet. Work includes the removal of mill material and other incidental work. Unless otherwise noted on the plans, the pavement removal shall be limited to an area that will be covered with a surface treatment or a layer of pavement within seven calendar days after removal has begun.

Measurement shall be based upon the square yards area milled. Payment shall be based upon the unit price bid for Milling, 1.0 – 2.0”.

**09 PAVEMENT MARKERS, CLASS A-H, TYPE 2C:**

Work under this item shall include all labor, equipment, and materials necessary for the complete furnishing and installation of pavement markers of the Class and Type specified in the contract in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition.

Measurement shall be based on each Pavement Marker, Class A-H, Type 2C placed. Payment shall be based on the unit price bid for Pavement Marker, Class A-H, Type 2C in accordance with Alabama Department of Transportation item number 705A.

**10 PAVEMENT MARKERS, CLASS A-H, TYPE 2D:**

Work under this item shall include all labor, equipment, and materials necessary for the complete furnishing and installation of pavement markers of the Class and Type specified in the contract in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition.

Measurement shall be based on each Pavement Marker, Class A-H, Type 2D placed. Payment shall be based on the unit price bid for Pavement Marker, Class A-H, Type 2D in accordance with Alabama Department of Transportation item number 705A.

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**11 REMOVING CURB AND GUTTER:**

Work under this item shall include all labor, equipment, and materials necessary for the complete removal of existing curb, curb and gutter, and gutter as necessary for the construction identified on the drawings and within these specifications. Removal shall include necessary saw cutting, removal, disposal to a location deemed necessary by the contractor and other incidental work. Excavation will be done to depths necessary to reach a suitable subgrade material, unless otherwise deemed necessary by the Project Manager.

Measurement shall be based on linear feet for Removing Curb and Gutter. Payment shall be based on the unit price bid for Removing Curb and Gutter.

**12 REMOVING SIDEWALK:**

Work under this item shall include all labor, equipment, and materials necessary for the complete removal of existing sidewalk and driveways as necessary for the construction identified on the drawings and within these specifications. Removal shall include necessary saw cutting, removal, disposal to a location deemed necessary by the contractor and other incidental work. Excavation will be done to depths necessary to reach a suitable subgrade material, unless otherwise deemed necessary by the project manager.

Measurement shall be based on square yards for Removing Sidewalk. Payment shall be based on the unit price bid for Removing Sidewalk.

**13 SIDEWALK, 4" THICK:**

This work shall include all labor, materials, material testing, and equipment necessary for the complete installation of 4" thick concrete sidewalk including excavation, fill material, subgrade preparation, forming, pouring, expansion joints, saw cutting, finishing, installing detectable warning material and other incidental work in accordance with the City of Auburn standard details and specifications. Work under this item will also include any spot remediation of broken or damaged sidewalk within the project limits to be identified by the Project Manager.

Measurement shall be based upon square yards of in place Sidewalk (4" Thick). Payment shall be based upon the unit price bid for Sidewalk (4" Thick).

**14 SIDEWALK, 6" THICK:**

This work shall include all labor, materials, material testing, and equipment necessary for the complete installation of 6" thick concrete sidewalk including excavation, fill material, subgrade preparation, forming, pouring, expansion joints, saw cutting, finishing, installing detectable warning material and other incidental work in accordance with the City of Auburn standard

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details and specifications. Work under this item will also include any spot remediation of broken or damaged sidewalk within the project limits to be identified by the Project Manager.

Measurement shall be based upon square yards of in place Sidewalk (6" Thick). Payment shall be based upon the unit price bid for Sidewalk (6" Thick).

**15 SINGLE-WING INLET:**

Work under this item shall include all labor, equipment, and materials necessary for the construction of a new single-wing inlet. Included in this work is the removal of any existing structure, forming, excavating, and the construction of new inlet per City of Auburn specifications.

Measurement shall be by each complete inlet. Payment shall be based upon the unit price bid for single-wing inlet.

**16 SOD:**

Work under this item shall include all labor, materials, and equipment necessary for the complete installation of sod including preparation, watering, fertilizing, placement, and other incidental work. The Contractor shall place sod in accordance with the Alabama Department of Transportation and City of Auburn specifications. The soil shall be free of rocks and debris prior to the placement of sod. The contractor shall be responsible for matching the new sod with the existing sod.

Measurement shall be based upon square yards of Sod. Payment shall be based upon the unit price bid for sod.

**17 SOLID TEMPORARY TRAFFIC STRIPE:**

Work under this item shall include all labor, equipment, and materials necessary for the placement of temporary striping. Temporary striping shall be installed the same day for any existing permanent striping that is covered during paving operations, or removed during milling activities. Striping material shall be Class I, Type "A" paint with reflective beads and shall be placed in accordance with Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition.

Measurement and payment shall be based upon the Linear Foot price bid for Solid Temporary Traffic Stripe.

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**18 SOLID WHITE, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE):**

Work under this item shall include all labor, equipment, and materials necessary for the complete installation of Solid White, Class 2 Type A Traffic Stripe in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition. Work shall include placement of new striping as necessary to complete the work.

Measurement shall be based on linear feet of Solid White, Class 2 Type A traffic stripe installed. Payment shall be based on the unit price bid for Solid White Class 2 Type A Traffic Stripe in accordance with Alabama Department of Transportation item number 701A.

**19 SOLID YELLOW, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE):**

Work under this item shall include all labor, equipment, and materials necessary for the complete installation of Solid Yellow, Class 2 Type A Traffic Stripe in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition. Work shall include placement of new striping as necessary to complete the work.

Measurement shall be based on linear feet of Solid Yellow, Class 2 Type A traffic stripe installed. Payment shall be based on the unit price bid for Solid Yellow Class 2 Type A Traffic Stripe in accordance with Alabama Department of Transportation item number 701A.

**20 TEMPORARY TRAFFIC CONTROL MARKINGS:**

Work under this item shall include all labor, equipment, and materials necessary for the placement of temporary traffic control markings as shown on the attached contract documents. Temporary markings shall be installed the same day for any existing markings that are covered during paving operations. Striping material shall be Class I, Type "A" paint with reflective beads and shall be placed in accordance with Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition.

Measurement and payment shall be based upon the unit price bid for Temporary Traffic Control Markings.

**21 TRAFFIC CONTROL LEGENDS, CLASS 2, TYPE A:**

Work under this item shall include all labor, equipment, and materials necessary for the complete installation of traffic control legends in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition. Work shall include placement of new legend as shown on the construction drawings and/or the appendices.

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Measurement shall be based on square feet of Traffic Control Legends, Class 2, Type A placed. Payment shall be based on the unit price bid for Traffic Control Legends, Class 2, Type A in accordance with Alabama Department of Transportation item number 703B.

**22 TRAFFIC CONTROL MARKINGS, CLASS 2, TYPE A:**

Work under this item shall include all labor, equipment, and materials necessary for the complete installation of traffic control markings in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction and Standard and Special Drawings, latest edition. Work shall include placement of new markings as shown on the construction drawings and/or the appendices.

Measurement shall be based on square feet of Traffic Control Markings, Class 2, Type A placed. Payment shall be based on the unit price bid for Traffic Control Markings, Class 2, Type A in accordance with Alabama Department of Transportation item number 703A.

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**APPENDIX A. DAVIS-BACON LABOR STANDARDS**

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# DAVIS-BACON AND LABOR STANDARDS AGENCY/CONTRACTOR GUIDE

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## INTRODUCTION

This Guide has been developed as part of HUD’s communications strategy with its approximately 5,000 client agencies, and contractors performing work on construction projects that are assisted by the U.S. Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide does not address contractor requirements involved in direct Federal contracting where HUD or another Federal agency enters into a procurement contract. While the guidance contained in this Guide is generally applicable to any Davis-Bacon-covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

This Guide has been designed to help agencies develop organizational and administrative policies that will enable them to meet labor standards contractual responsibilities in the administration of HUD-assisted programs as efficiently as possible. It is also useful as a training tool and a ready reference for compliance staff. Further, it may be used by contractors to provide further background. While this Guide is intended to address numerous situations, it was not written to cover every possible labor standards issue. If there is a labor standards issue not addressed in this Guide, please contact your local HUD Labor Standards Specialist (LSS). Throughout this Guide, the acronym “LCA” or “LCAs” shall mean state, tribal, and local agencies.

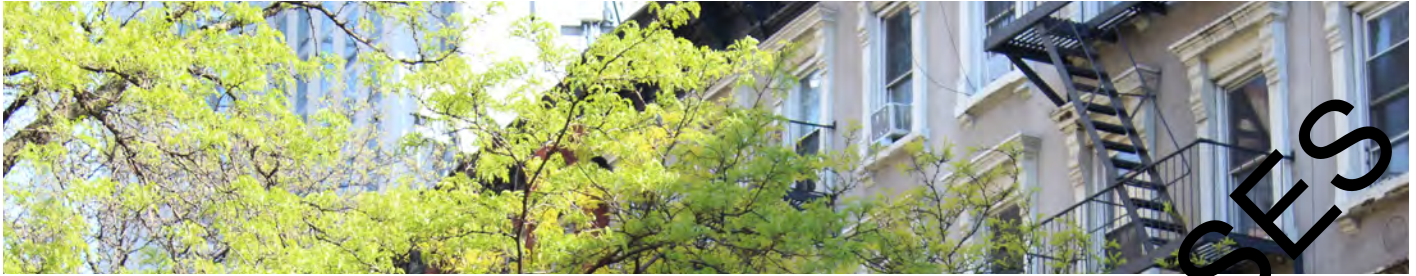
This Guide also provides information to assist with Davis-Bacon labor standards compliance. HUD’s Office of Davis-Bacon and Labor Standards worked with the U.S. Department of Labor’s Wage and Hour Division to ensure that the labor standards provisions required to be incorporated in Davis-Bacon contracts and the specifics of complying with them represent the latest information. The U.S. Department of Labor (DOL) has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

This Guide contains five main chapters. The first chapter includes basic DBA definitions that affect every Davis-Bacon-covered project. The second chapter lists the responsibilities of state, tribal, and local contracting agencies that administer HUD programs. The third chapter includes the laws and regulations associated with Federal labor standards administration and enforcement. The fourth chapter describes LCA flexibility for labor standards responsibilities. The fifth and final chapter discusses payroll compliance reviews and corrections.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. If you need assistance in determining whether Davis-Bacon wage rates apply to a project or if you need other related technical assistance, please contact the HUD Labor Standards Field staff for your area. If you do not know which staff to contact, a list of Labor Standards field offices with their geographic areas, telephone numbers and email addresses are located on HUD’s Home Page at the address below.

## RESOURCE

Visit the Office of Davis Bacon and Labor Standards online:  
[www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards](http://www.hud.gov/program_offices/davis_bacon_and_labor_standards)



## KEY LABOR STANDARDS OBJECTIVES OF THE GUIDE

The Office of Davis-Bacon and Labor Standards has identified five Key Labor Standards Objectives—the basics of what must be accomplished in order to protect workers’ rights. We also identified all the policies, procedures, and paperwork at our disposal—what we do ourselves and what we impose on contractors. HUD eliminated superfluous requirements and will not institute policies, procedures, or paperwork that is not required by statute or regulation, or that does not contribute to one or more of the Key Objectives.

### Apply Davis-Bacon requirements properly

Make certain that labor standards, including Davis-Bacon and prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.

### Through education and advice, support contractor compliance with labor standards

Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.

### Monitor contractor performance

Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.

### Investigate probable violations and complaints of underpayment

Thoroughly explore any evidence of violations, especially allegations of underpayment.

### Pursue debarment and other available sanctions against repeat labor standards violators

Carry out a zero tolerance policy toward contractors who violate prevailing wage laws.

## RESOURCE

Program technical guidance

For interpretations of program requirements or handbooks and instructions on the use of forms:

Housing Programs - See our [Contact List](#) for help.

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## BASIC DBA DEFINITIONS

There are several compliance principles, definitions, and interpretations that affect every Davis-Bacon-covered project.

### Responsibilities of employers

All employers (contractors, subcontractors, and any lower-tier subcontractors) are required to pay all laborers and mechanics employed or working on the site of the work unconditionally and not less often than once per week the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage decision. Employers must prepare, certify, and submit weekly payroll reports reflecting all the laborers and mechanics (employees) engaged in construction on the site of the work. Employers may also be required to submit related documentation in order to demonstrate compliance.

### Responsibilities of the principal (prime) contractor

The principal contractor (also referred to as the “prime contractor”) is responsible for the full compliance of all employers (itself, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project.

### Prime contractor

The principal contractor.

### Subcontractor

All subcontractors and lower-tier subcontractors.

### Employer

Any contractor, subcontractor, or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.

To make this guide easier to understand, the term “prime contractor” will mean the principal contractor; “subcontractor” will mean all subcontractors including lower-tier subcontractors; and the term “employer” will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

### Laborers and mechanics

Those individuals whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., electrician). “Laborers” and “mechanics” include apprentices, trainees, helpers, and, for contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), watchmen and guards.

### Working foremen

Foremen or supervisors that perform construction work and devote more than 20% of their time as a laborer or mechanic are treated, for labor standards purposes, as “laborers” or “mechanics” for their time spent working as a laborer or mechanic.

### Exclusions

Persons whose duties are primarily administrative, managerial, or clerical are not laborers or mechanics.

## Employee

Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.

### Working subcontractors

Persons who perform the work of laborers or mechanics and who represent themselves to be owners of businesses, sole proprietors, or self-employed are not exempt from prevailing wage requirements. These laborers and mechanics are “employed” and are entitled to the prevailing wage for the type of work they perform, and must be reported on the payroll report for their craft, hours of work, and wages paid. For additional information, see LR-96-01, Labor Standards for Self-Employed Laborers and Mechanics.



**Administrative allowances**

HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following:

- Owners of Businesses Working with Their Crew
- Owner/Operators of Power Equipment
- Owner/Operators of Trucks

**Apprentice**

A person employed and individually registered in a bona fide apprenticeship program. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship, or with a DOL-recognized State Apprenticeship Agency (SAA). (Note that an SAA must also partner with a State Apprenticeship Council (SAC). The SAC must consist of an equal number of representatives of employer and employee organizations.)

**Probationary apprentice**

A person in the first 90 days of probationary employment as an apprentice in a bona fide apprenticeship program but who has not yet been formally registered in such program may be considered an “apprentice” provided that DOL or SAC has certified that such person is eligible for probationary employment as an apprentice.

**Pre-apprentice**

A person who is employed as a “pre-apprentice” that is, in a preparatory position which may result in registration in an apprenticeship program—is not considered to be an “apprentice.”

**Trainee**

A person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the Office of Apprenticeship Training.

**Prevailing wages or wage rates**

Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any. “Prevailing wage” is made up of two interchangeable components: the basic hourly wage, and fringe benefits. The total of the basic hourly wage and fringe benefits comprises the “prevailing wage” obligation. This obligation may be met by any combination of cash wages and creditable “bona fide” fringe benefits provided by the employer. For example:

The Davis-Bacon wage decision requires:

Basic Hourly Rate	\$10.00
Fringe Benefits	\$1.00
<b>Total Prevailing Wage</b>	<b>\$11.00</b>

Employers may comply by paying:

1. \$11.00 in cash wages;
2. \$10.00 plus \$1.00 in bona fide fringe benefits; or
3. Any combination of wages and benefits that totals \$11.00 per hour.



**Piece rate/piece work employees**

Employees whose earnings are calculated by the amount of work produced (rather than hours worked) must receive no less than the applicable DBRA/MWD (Davis-Bacon and Related Acts/Maintenance Wage Determination) wage rate based upon the hours of work performed. The employer must divide the piece rate earnings by the actual hours worked to determine the “effective” hourly rate. The effective hourly rate must be calculated for each week’s earnings and must be no less than the applicable prevailing wage rate. It does not matter whether the effective hourly rate changes from week to week as long as the result is at least as much as the prevailing wage rate. If the effective hourly rate is less than the applicable prevailing wage rate, the employee must be compensated at the prevailing wage rate for all hours worked.

**Fringe benefits**

Fringe benefits may include:

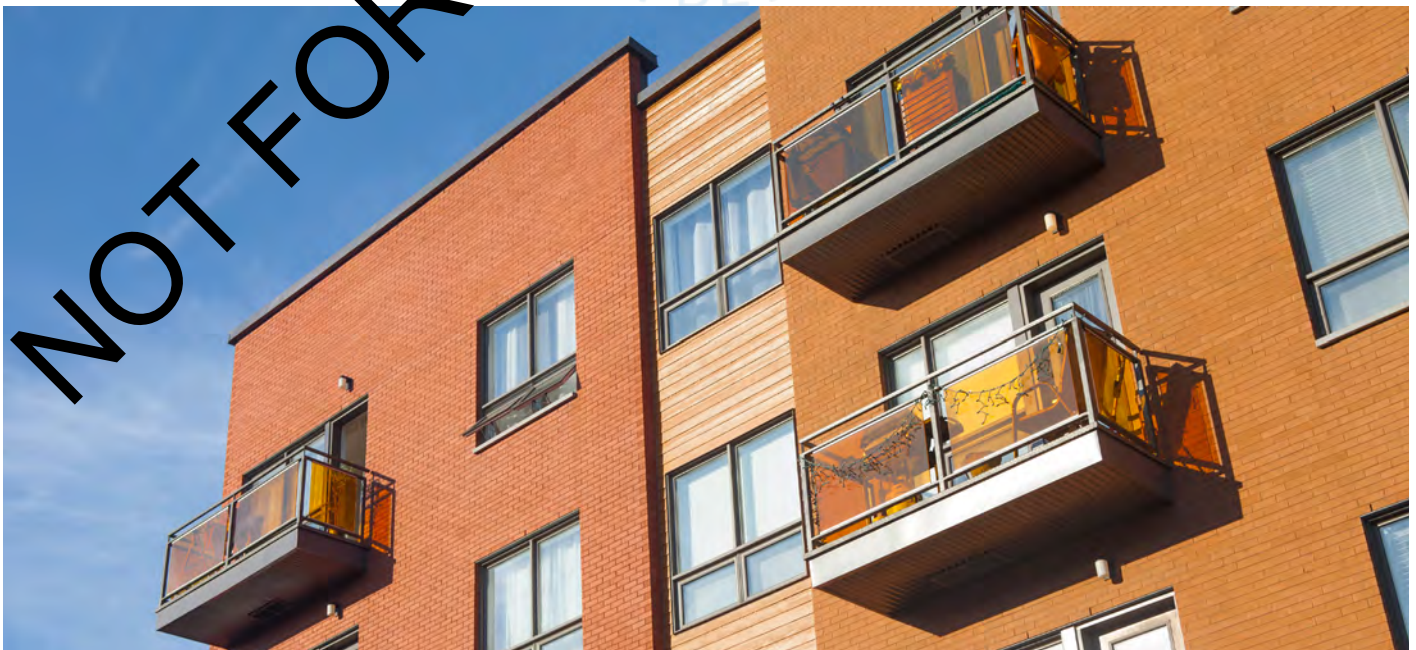
- Sick, vacation, or holiday pay;
- Costs to defray expenses of apprenticeship or similar programs;
- Medical or hospital care;
- Supplemental unemployment benefits;
- Life insurance;
- Pensions on retirement or death;
- Compensation for injuries or illness resulting from occupational activity;
- Other bona fide fringe benefits; or
- Insurance to provide any of the above.

**MORE INFO**

In addition, fringe benefits may reflect the rate of cost to the employer that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program.

**MORE INFO**

Fringe benefits do not include employer contributions or payments required by other federal, state, or local law, such as FICA (Federal Insurance Contributions Act), workers’ compensation, or unemployment compensation.



**Overtime**

Overtime (O/T) hours are defined as all hours worked in excess of 40 hours in any workweek. Where governed by Federal labor standards, O/T hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time (S/T) rate of any required fringe benefits.

**Deductions**

The employer may make payroll deductions as permitted by DOL regulations in 29 CFR Part 3. These regulations prohibit the employer from requiring employees to “kick back” any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement contributions, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee (which will require documentation).

**Site of work**

The “site of work” is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed. “Site of work” includes other adjacent or nearby properties used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided they are dedicated exclusively

or nearly so to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

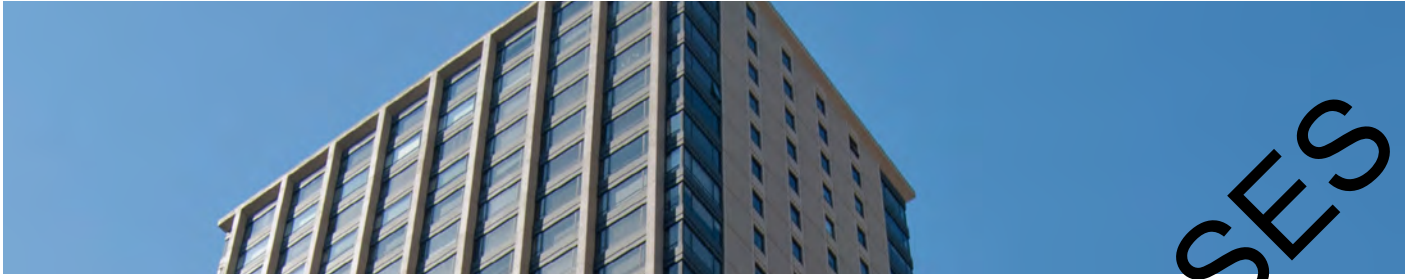
**Proper designation of trade**

Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work they perform and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for carpenters even if they are not considered by the employer to be fully trained as a carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.

**Split classification**

Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification provided that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.





## LCA RESPONSIBILITIES

State, tribal, and local contracting agencies (LCAs) that administer HUD programs agree to administer and enforce Davis-Bacon requirements as a condition for receiving HUD program assistance. LCAs have the following responsibilities:

1. Designate appropriate staff (e.g., a Contract Administrator) before the start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD Field Office of Davis-Bacon and Labor Standards.
2. Establish a construction contract management system that meets the standards of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
3. Ensure that all bid documents, contracts, and subcontracts contain the applicable Davis-Bacon wage decision and Federal labor standards provisions.
4. Ensure that no contract is awarded to a contractor that is ineligible (e.g., debarred) for Federally-assisted work.
5. Conduct on-site inspections including interviews with laborers and mechanics employed on the construction project. Ensure that the applicable Davis-Bacon wage decision, DOL's Davis-Bacon poster (Form WH-7321), and additional classifications are displayed at the job site.
6. Review certified payroll reports (CPRS) and related documentation. Identify any discrepancies and/or violations. Ensure that any needed corrections are made promptly, including the payment of wage restitution as needed, and the assessment and collection of liquidated damages, as appropriate.
7. Maintain all documentation of Federal labor standards administration and enforcement activities.
8. Refer potential criminal or complex enforcement actions to HUD, in addition to CWHSSA liquidated damages assessments for O/T violations and debarment recommendations.
9. Comply with all HUD requirements concerning statutory, program, and/or other requirements.
10. Prepare Federal labor standards enforcement reports as required in DOL regulations (29 CFR Part 5, § 5.7).



## LAWS AND REGULATIONS

### The Davis-Bacon Act (DBA)

The DBA, enacted in 1931, applies to contracts in excess of \$2,000 for construction, alteration, and/or repair of public buildings or public works, including painting and decorating, to which the United States or the District of Columbia is a party. This type of applicability is referred to as direct Davis-Bacon Act or DBA coverage. An example of DBA coverage is when HUD contracts directly for repairs to HUD-owned properties. HUD's Office of the Chief Procurement Officer manages these types of contracts. The DBA requires that the advertised specifications for such contracts contain a provision stating that the minimum wages to be paid to various classes of laborers and mechanics must be based upon the wages found to be prevailing by the Secretary of Labor.

Most HUD construction work is not covered by the DBA since HUD does not usually contract directly for construction work. Further, Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD "Related Acts" such as the U. S. Housing Act of 1937 and the Housing and Community Development Act of 1974, as amended. The Related Acts (referred to throughout this Guide as the Davis-Bacon and Related Acts or DBRA) are discussed further in Section 5.9.

The DBA includes provisions that:

1. Require the contractor or subcontractor to pay all mechanics and laborers at least once per week;
2. Prohibit contractors or subcontractors from taking deductions or rebates from wages earned by laborers and mechanics;
3. Require the contractor or subcontractor to pay Davis-Bacon wages to all laborers and mechanics employed on the site of the work regardless of their skill level, and regardless of any contractual relationship alleged to exist between the laborers and mechanics and the contractor or subcontractor;

4. Require the contractor or subcontractor to post the scale of wages to be paid (i.e., the applicable Davis-Bacon wage decision) in a prominent and accessible place at the work site;
5. Define prevailing wages to include fringe benefits;
6. Permit the withholding of payments due to the contractor on account of wage restitution that may be found due to the laborers and mechanics;
7. Permit the payment of wage restitution from amounts withheld from contract payments;
8. Permit the termination of the contract where it is found that any laborer or mechanic is underpaid; and
9. Permit the debarment of persons or firms found to have disregarded their obligations to employees and subcontractors.

### The Contract Work Hours and Safety Standards Act (CWHSSA)

The CWHSSA applies to both direct federal contracts and to federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Agencies (PHA), Tribally Designated Housing Entities (TDHE), and Indian Housing Agencies (IHA) developments.

CWHSSA O/T provisions do not apply to laborers and mechanics employed directly by PHAs or IHAs. However, O/T provisions generally apply to these workers under the Fair Labor Standards Act (FLSA). HUD does not have authority to enforce FLSA violations. Refer complaints of FLSA violations to DOL, Wage and Hour Division.

CWHSSA provides that all O/T hours (defined as hours worked in excess of 40 during any workweek on the CWHSSA-covered project site) must be compensated at a rate not less than one and one-half times the regular basic rate of pay. Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States Government for liquidated damages computed per person per day at a rate that DOL publishes annually. It is a federal criminal misdemeanor to intentionally violate CWHSSA standards.

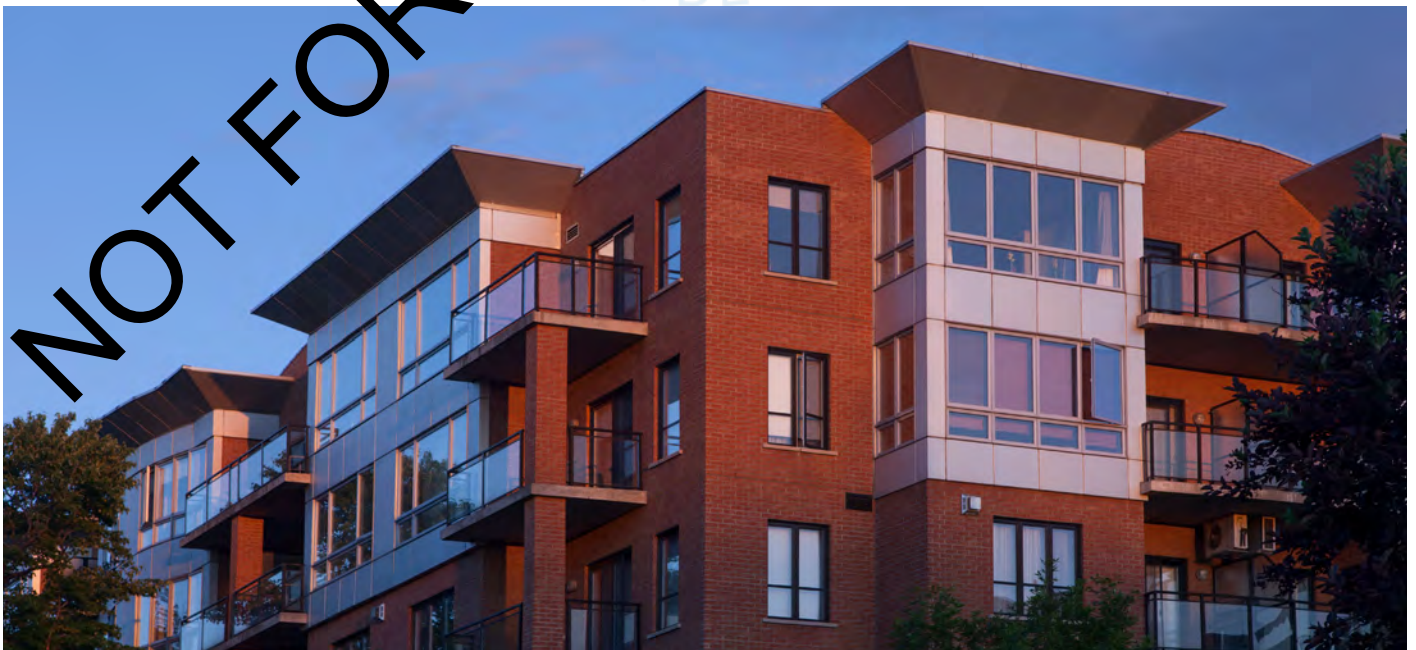
Exemptions:

- CWHSSA O/T provisions do not apply where the federal assistance is only in the nature of a loan guarantee or insurance.
- CWHSSA O/T provisions do not apply to prime contracts of \$100,000 or less.

**RESOURCE**

DOL posts current fines at:

<https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>



NOT FOR BIDDING PURPOSES

**The Copeland Act (Anti-Kickback Act)**

The Copeland Act concerns three facets of prevailing wage compliance:

1. The “anti-kickback” provision prohibits contractors and subcontractors from inducing an employee working on a covered contract to give up any part of the compensation to which he or she is entitled. Violations are a criminal offense and are punishable by a \$5,000 fine or imprisonment up to five years, or both.
2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 CFR § 3.5; deductions that require advance DOL approval are explained at 29 CFR § 3.6.
3. The Act requires the submission of weekly CPRs accompanied by a Statement of Compliance by all contractors and subcontractors engaged in such construction, prosecution, completion, or repair. The willful falsification of a CPR or statement of compliance may subject the employer to civil or criminal prosecution under § 1001 of Title 18 and § 3729 of Title 31 of the United States Code (USC) and may also be a cause for debarment.

Exemptions:

- Copeland Act CPR requirements are applicable only where Davis-Bacon (DBA or DBRA) prevailing wage provisions are applicable.
- Copeland Act anti-kickback provisions do not apply where the only federal assistance is a loan guarantee.



**The Fair Labor Standards Act (FLSA)**

The FLSA governs matters such as federal minimum wage rates and O/T. These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

**Portal-to-Portal Act (PA)**

The PA applies to the DBA and prevents the commencement of any court suit for unpaid S/T wages more than two years after performance of the work (three years in the case of willful violations), where permissible under the law. However, DOL’s position is that the PA does not apply to administrative actions initiated through Administrative Law Judge (ALJ) hearing procedures; thus, the PA does not preclude corrective administrative action after two (or three) years.

The PA does not apply to federally-assisted (DBRA) projects. Instead, the various State statutes of limitations apply to such projects in private actions where they are judicially determined to be permissible under the law. The Federal six-year statute of limitations applies in government enforcement actions.

**McNamara-O’Hara Service Contract Act (SCA)**

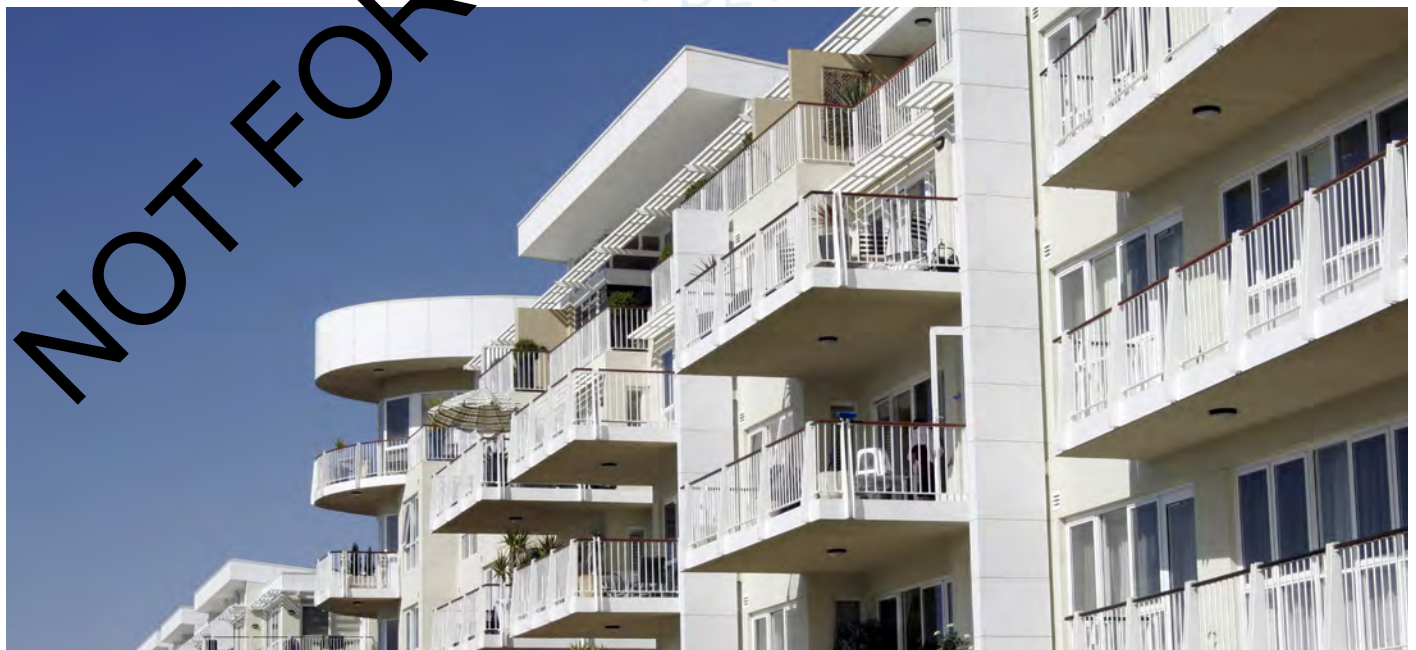
The SCA governs maintenance and other service work and applies

when the Federal Government or the District of Columbia contracts directly for such services and the value of the contract exceeds \$2,500. SCA coverage in HUD programs is limited because HUD infrequently enters into direct contracts for services in the administration of its programs. By way of example, however, a contract for maintenance service at an HUD-owned multifamily property would be covered by the SCA. Like DBA contracts, SCA contracts are managed under the auspices of HUD’s Office of the Chief Procurement Officer. SCA enforcement authority resides solely with DOL.

**Davis-Bacon Regulations**

DOL has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in Title 29 CFR Parts 1, 3, 5, 6, and 7. Part 1 explains how DOL establishes and publishes DBA wage determinations (also referred to as wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly CPRs. Part 5 covers the labor standards provisions that are in contracts relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Finally, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

DOL Regulations are available online: [www.ecfr.gov/current/title-29](http://www.ecfr.gov/current/title-29)



## Construction Contract Provisions and Labor Standards Administration

Labor standards administration involves the activities that take place primarily before construction begins. Administration sets the stage for the compliance activities that occur during the construction phase. The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Labor Standards Applicability (see Appendix II-6) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon, but there are some exceptions. The best and safest approach is to first assume that Davis-Bacon requirements will be applicable whenever the contract/project involves construction work valued in excess of \$2,000, then look more closely to see if there is any reason for non-coverage. Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally wound into the contract specifications.

### The labor standards clauses

The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and with the O/T provisions of the CWH/WSA (applicable

only when the prime contract is valued at over \$100,000).

The labor standards clauses also provide for remedies in the event of violations, including the withholding of payments due to the contractor to ensure the payment of wages or liquidated damages that may be found due, and sanctions should violations occur. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-92554M, Supplementary Conditions Of The Contract for Construction, which is issued primarily for FHA (Federal Housing Administration) multifamily housing and other construction projects administered by HUD, the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG (Community Development Block Grant) and HOME (HOME Investment Partnerships Program) projects; and the HUD-5370, General Conditions for Construction Contracts (construction contracts >\$150,000) or the HUD-5370-EZ, General Contract Conditions for Small Construction/Development Contracts (construction contracts >\$2,000 but ≤\$150,000) which are used for Public and Indian Housing projects. These should be wound into the contract specifications or incorporated by specific reference in the bid/contract documents (see Labor Relations Letter 96-03).

### RESOURCE

A fillable version of this form is available online at HUDClips [www.hud.gov/program\\_offices/administration/hudclips/forms](http://www.hud.gov/program_offices/administration/hudclips/forms)  
 Contact the contract administrator monitoring the project for assistance with a Project Wage Rate.



## Specific Davis-Bacon Related Act (statute) for the program involved

Related Acts are program statutes that contain provisions requiring compliance with the wages that the Secretary of Labor finds to be prevailing pursuant to the Davis-Bacon Act. These are commonly referred to as the Davis-Bacon and Related Acts or DBRA.

HUD Related Acts include (but are not limited to) the:

- National Housing Act;
- U. S. Housing Act of 1937;
- Housing and Community Development Act of 1974;
- National Affordable Housing Act of 1990; and
- Native American Housing Assistance and Self-determination Act of 1996, each as amended.

Many of the labor provisions in HUD Related Acts contain applicability thresholds based upon the number of dwelling units involved. Some thresholds are based upon the amount of HUD assistance or the use of HUD funds or assistance. In addition, most HUD Related Acts contain exemptions from prevailing wage coverage for bona-fide volunteers. It is important for DBLS and LCA staff to be familiar with the statutory provisions and how these are interpreted.

The labor provisions found in current HUD Related Acts are excerpted for reference in Appendix II-1 to this Guide. Applicability factors relating to specific HUD Related Acts are in Appendix II-

## Labor Standards Letters

This special directives series is designed to provide current and thorough guidance on Davis-Bacon issues in HUD programs. Popular topics include Davis-Bacon applicability, and prevailing wage requirements concerning self-employed laborers and mechanics. Labor Standards Letters are available online at the Davis-Bacon and Labor Standards Library: [www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olr\\_ltr](http://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_ltr)

## HUD Guides

These Guides complement the guidance and instructions provided in HUD Handbook 1344.1, Federal Labor Standards Compliance in HUD Programs. These guides are also available at the Davis-Bacon and Labor Standards Library.

## Davis-Bacon Wage Decisions

The term “wage decision” includes the original decision and any subsequent decisions that modify, supersede, correct, or otherwise change the provisions of the original decision. The term “wage decision” is used within this Guide to mean the Davis-Bacon wage decision. The terms “wage decision” and “wage determination” are used interchangeably. A wage decision is a schedule of construction work classifications, wage rates, and fringe benefits that represent the minimum rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county



or group of counties, and four general characters of construction work.

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### Character of work

There are four basic categories (or characters) of wage decisions based on the type of construction. DOL established these categories and provides details of each one in All Agency Memoranda Nos. 130 and 131. DOL provides further guidance in All Agency Memorandum 236, Prevailing Wage Resource Book, and Field Operations Handbook, Chapter 15. The four categories include:

- 1. Residential:** Residential construction includes the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This typically includes all incidental items unless there is an established area practice to the contrary.

Incidental items are elements of a project whose function is to support the principal purpose and do not change the overall character of work. Examples of incidental items include sidewalks and handrails installed to support residential or building projects. While sidewalks intrinsically constitute “highway” construction, this element considered in conjunction with a residential or building project becomes incidental to the principal purpose of the construction and is subject to the same wage decision that applies to the principal purpose.

**RESOURCE**

All current Davis Bacon wage decisions can be accessed online at no cost at [www.sam.gov](http://www.sam.gov)



**Character of work (continued)**

- 2. **Building:** Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This category includes buildings exceeding four stories in height that have housing units and buildings of four stories or less that do not have housing units. This category also includes incidental items such as grading, sidewalks, and utilities. Building examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, parking garages, and dormitories.
- 3. **Highway:** Highway construction includes the construction, alteration, or repair of roads, streets, highways, alleys, parking areas, and other similar projects not incidental to the main category of construction, which is either residential or building for housing development projects.
- 4. **Heavy:** Heavy construction includes those projects that are not properly classified as “residential,” “building,” or “highway.” Some examples include antenna towers, canals, landscaping, drainage and irrigation projects, permanent erosion control, storm sewers, and storage tanks.

**General wage decisions**

Most Davis-Bacon wage decisions are general wage decisions. DOL usually publishes these annually and may modify or supersede them throughout the year. LCAs and HUD Labor Standard Specialists (LSS) may use general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published

general wage decisions.

General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors, and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if HUD or an LCA receives them, or if notice of the modification is published at [www.sam.gov](http://www.sam.gov) prior to the lock-in date. Modifications to a project wage decision expire on the same date as the original project wage decision. A modification to a general wage determination remains in effect until it is superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.

**Project wage decisions**

If an appropriate wage decision (by location, character of work, or specific trade required) is not published in the general wage decisions, a project wage decision shall be requested from DOL. Project wage decisions are applicable only to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified.

A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example: A project involves only roof replacement on a 4-story apartment building and the only classification needed for the entire contract is a roofer.



**Project wage decisions (continued)**

A general wage decision is published for residential construction in the county in which the project is located; however, the general wage decision does not include a roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision may be requested from DOL.

**RESOURCE**

General wage decisions and modifications are available at [www.sam.gov](http://www.sam.gov)

This is the only online location endorsed by DOL. Project wage decisions must be requested on a case by case basis from DOL.

administering HUD programs in selecting and assigning appropriate wage decisions. Determining wage decisions is dependent upon the geographic location and the character of work (Residential, Building, Highway, and/or Heavy) assigned to the project.

A request for additional classification and wage rates may be made only after contract award. The request must originate with the contractor/ employer and must be submitted by the LCA to DOL.

**MORE INFO**

Conformances (additional classifications)

At times, the wage decision will not contain some of the work classification and wage rates that are needed for the construction work. In these cases, send a form SF 1444 to DOL at [whd-cbaconformance\\_incoming@dol.gov](mailto:whd-cbaconformance_incoming@dol.gov)

**Project wage decisions, as needed**

The LCA or LSS shall submit a completed SF-308, Request for Wage Determination And Response to Request, to the DOL National Office, allowing 30 days for receipt of the project wage decision from DOL.

**Selecting the correct wage decision**

The responsible contracting officer (also referred to as the contract administrator) selects and assigns wage decisions to specific contracts or projects. For HUD-administered projects (e.g., FHA insured multifamily development), the responsible contracting officer is the LSS. In addition, the LSS provides technical support and oversight to LCAs



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A request for additional classification and wage rates may be made only after contract award. The request must originate with the contractor/ employer and must be submitted by the LCA to DOL.

**Verify contractor eligibility**

Once the LCA has selected the contractor to whom they wish to award the contract, the LCA must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. Only the eligibility of the prime contractor needs to be verified. The U.S. General Services Administration (GSA) maintains a list of ineligible contractors, which can be accessed online at [www.sam.gov](http://www.sam.gov)

An additional classification and wage rate will be approved by DOL where:

1. The requested work classification is used in the area of the project by the construction industry;
2. The work that will be performed is not performed by a work classification already contained in the wage decision;
3. The proposed wage rate bears a reasonable relationship to the wage rates on the wage decision; and
4. The workers that will be employed in the requested work classification (if known) or the workers' representatives (if any) agree with the proposed wage rate.

**Provide contractor training**

The LCA must make certain that the contractor understands its responsibilities for Davis-Bacon compliance: The principal contractor is responsible for the full compliance of all employers (the contractor, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project. LCAs may also wish to provide formal training separate from the contracting process for contractors that are interested in performing work on HUD-assisted contracts and want to learn more about what is involved.





**CONTRACTOR RESPONSIBILITIES**

See Section 4 in the Contractor Addendum.

**CONTRACT ADMINISTRATOR RESPONSIBILITIES**

See Section 5 in the Contractor Addendum.

**LCA FLEXIBILITY FOR LABOR STANDARDS RESPONSIBILITIES**

While some aspects of labor standards administration are inflexible such as which wage decision is applicable to a specific project, the following aspects are not. For these, HUD leaves the preference on how to achieve end results with the LCA.

**LCA may hold preconstruction conferences for labor standards purposes**

HUD acknowledges that there are many good reasons to hold a preconstruction conference (PCC), and these conferences are strongly encouraged in order to have the opportunity to discuss topics such as construction inspections, progress and contractor payment requirements, Section 3 employment and training, and other issues particular to the project. However, HUD has determined that the time and resources used to conduct and document PCCs for labor standards purposes do not yield measurably better results.

Many contractors have prior Davis-Bacon contract experience and have demonstrated successful performance. These contractors do not require the repetitive basic training that is provided at most PCCs. Contractors new to Davis-Bacon projects that understand the basic requirements and choose not to comply will likely not be persuaded to fully comply just because they attended a PCC.

**LCA may prepare Project Wage Rate Sheets**

Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the workers reviewing the wage decision to determine whether they are being paid correctly. For ease of reference for the LSS/LCA, the prime contractor and any subcontractors, and the workers, the LSS/LCA may prepare a form HUD-4720, Project Wage Rate Sheet, which should reflect the most commonly used work classifications and wage rates as contained in the wage decision applicable to the project. The Project Wage Rate Sheet should be prepared only after the wage decision has been “locked-in” by contract award or start of construction, as applicable. The Project Wage Rate Sheet does not replace the wage decision; it is only provided as a convenience. If there is a conflict between the Project Wage Rate Sheet and the wage decision, the wage decision prevails.

LCAs can prepare a Project Wage Rate Sheet for contracts using the onscreen fillable versions in either the HUD Forms or DBLS websites. HUD DBLS staff is available to provide assistance to LCAs in preparing Project Wage Rate Sheets. HUD strongly recommends incorporation of the full wage decision text into bid solicitations and contracts, either in hard copy or by specific reference.

**LCAs may develop their own labor standards file system**

HUD believes that LCAs can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls be preserved for no less than three years after completion of the project and the resolution of any enforcement actions that may carry over after completion. In addition, the files must be maintained in such a way that the LCA can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the LCA must, at HUD’s request, demonstrate how it has documented that the eligibility of the prime contractor was verified for each contract.

**LCAs may target on-site interviews with laborers and mechanics**

HUD is interested in using on-site interviews as a proactive enforcement tool rather than to meet a “representative sampling” quota. Instead of conducting interviews randomly for the sake of assembling a sample LCAs are encouraged to target interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific ongoing enforcement action. HUD realizes that this approach may mean that fewer on-site interviews may be conducted randomly; HUD considers targeting a far more efficient and effective means of utilizing on-site interview resources.

**LCAS may limit payroll reviews to spot-checks and HUD-11 (Employee Interview Form) comparison**

The goal: to detect falsification. HUD believes that serious violations involving underpaid workers and significant wage restitution may be overlooked because the contract administrator is overwhelmed with HUD-mandated payroll review minutiae. HUD recognizes that it is not possible to conduct payroll reviews in 100% of cases; therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of affected workers and the amount of underpayment) than violations that appear on the face of the payroll records. Accordingly, HUD has prioritized payroll reviews so that the objective is to detect falsification, and so that enforcement activities will yield the greatest impact. HUD has developed guidance on how to detect falsification through spot-checks and HUD-11 interview comparison. (See Willful Violations and Falsification Applicability in Appendix III-1)



**LCAS may limit payroll reviews to spot-checks and HUD-11 (Employee Interview Form) comparison (continued)**

Routine payroll review results may be communicated to the prime contractor by telephone and documented with a record in the file. Many times, the types of deficiencies that come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, email, etc.) with the employer/prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally—assuming the cooperation of both sides—include a missing payroll report or missing apprenticeship certificates, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor’s cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the employer/prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal means.

**RESOURCE**

The Department of Housing and Urban Development (HUD) one stop forms resource page.

[www.hud.gov/program\\_offices/administration/hudclips/forms](http://www.hud.gov/program_offices/administration/hudclips/forms)





## FEDERAL LABOR STANDARDS COMPLIANCE CHECKLIST FOR DAVIS-BACON COVERED PROJECTS

### RESOURCE

See LCA DBRA Checklist online at the link below:

[https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/OLRLibrary](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/OLRLibrary)

## REVIEWING PAYROLLS

See Section 7 in the Contractor Addendum.

## REPORTING PAYROLLS

See Section 8 in the Contractor Addendum.

## PAYROLL COMPLIANCE REVIEWS AND CORRECTIONS

### Compliance reviews

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. DOL may also independently conduct its own reviews (see 10.2.2 in the Contractor Addendum). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. Contractors will be notified by

the contract administrator if these reviews find any discrepancies or errors, and will be given instructions about what steps must be taken to correct any problems.

### On-site interviews

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative (or HUD or DOL representative). The interviews are confidential and the employees will be asked about the number of hours they work, the kind of work they perform, and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the ongoing work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator. Completed HUD-11s must be compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information.

### RESOURCE

HUD 11 forms are available online in English and in Spanish in a fillable format via the HUD Forms website ([www.hud.gov/program\\_offices/administration/hudclips/forms](http://www.hud.gov/program_offices/administration/hudclips/forms)) and at the DBLS website ([www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olrform](http://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform)).

**Project payroll reviews**

The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification, and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed, that employees are paid no less than the wage rate for the work classification shown, that apprentice and trainee certifications are submitted (where needed), that employee or other authorizations for other deductions are submitted (where needed), etc. Contract administrators should be particularly alert for indications of payroll falsification—misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates that a contractor or subcontractor is aware of its obligations, is knowingly underpaying its employees, and is attempting to avoid detection of the violations. See Appendix III-1 for an explanation of willful violations and falsification indicators.

**Typical payroll errors and required corrections**

Contract administrators must ensure the full correction of all discrepancies disclosed during compliance monitoring conducted by the LCA, HUD, or DOL. This includes the collection of documentation to demonstrate that corrective measures have been successfully completed. They must:

1. **Examine and resolve probable violations and complaints of underpayment.** Contract administrators must explore probable violations—particularly those involving falsification of payrolls and complaints alleging underpayments. In addition to the HUD-11, Record of Employee Interview, HUD has developed a questionnaire form (HUD-4730) and a complaint intake form (HUD-4731) for HUD and LCA use. The forms are available in online fillable formats at the HUD forms website and via the DBL website;
2. **Refer complex issues and/or falsification cases to HUD or DOL.** Some issues may be more complex than LCAs are able to address. HUD encourages LCAs to consult with the LSS for their area to secure appropriate guidance and support. HUD has decided, in consultation with DOL, that it will refer to DOL cases involving falsification of payrolls or related documents for DOL investigation. HUD strongly suggests that LCAs employ this strategy for cases involving falsification;
3. **Take steps to ensure the full resolution of any monetary liability that has or may be imposed for labor standards reasons.** Contract administrators must take prompt action to ensure that funds will be available to satisfy any labor standards liability that may be imposed. Actions include the withholding of contract payments due to the contractor and requiring funding for an escrow account to guarantee the satisfaction of any restitution and/or liquidated damages assessment that may be pending at contract closeout;



## Typical payroll errors and required corrections (continued)

4. **Recommend debarment against repeat violators.** HUD has implemented a zero tolerance policy against contractors who are repeat violators of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for O/T violations) that may be assessed. In addition, the employer must provide written assurance of future compliance. If the employer promptly completes these corrective actions, HUD will not object if the LCA does not recommend debarment against the employer unless there are extenuating circumstances that warrant debarment. If the employer is found in violation again, the LCA must require full correction of any underpayments and payment of CWHSSA liquidated damages assessed. A debarment recommendation made by the LCA against the employer is expected; and
5. **Prepare and submit enforcement reports.** In accordance with DOL regulations (29 CFR Part 5, § 5.7), the contract administrator must prepare and submit to HUD an enforcement report in any case where an employer (contractor or subcontractor) has underpaid its employees by \$1,000 or more or where there is reason to believe that the violations are aggravated or willful, and prepare and submit to HUD semi-annual enforcement reports concerning all Davis-Bacon labor standards administration and enforcement activities involving all HUD-assisted programs. Enforcement reports cover wage underpayments by contractors and subcontractors.

Note that enforcement reports concern only wage violations associated with projects or contracts subject to the labor standards provisions of the DBRA.

### Employer-specific enforcement reports

These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all federal, state, and local agencies. Second, to refer to the Wage and Hour Administrator investigative findings that are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Third, to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA O/T violations. (See Labor Relations Letter LR-92-02 for additional guidance concerning employer-based enforcement reports.)

6. **Semi-Annual Enforcement Reports.** HUD is required to furnish to DOL semi-annual reports (SARs) concerning the volume of DBRA-covered activities and the compliance and enforcement of DBRA labor standards provisions in HUD programs. The reports are due to DOL by April 30 and October 31 of each calendar year and cover the periods of October 1 through March 31 and April 1 through September 30, respectively. (See DOL regulations at 29 CFR § 5.7(b) and All Agency Memorandum 189.)



## Typical payroll errors and required corrections (continued)

To prepare the SAR, HQLS (Headquarters Office Davis-Bacon and Labor Standards) collects data from the LSIS (Labor Standards Information System) and from each RLSO (Regional Labor Standards Officer), and then submits the report to DOL, which accepts electronic submittals of the semi-annual reports in lieu of paper copies at [SemiAnnualReport@DOL.gov](mailto:SemiAnnualReport@DOL.gov). HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all HUD-assisted Davis-Bacon construction activity. The report may be completed onscreen, saved, and attached to an email message for submission purposes.

### RESOURCE

A copy of the Semi Annual Report form (HUD 4710) and instructions (HUD4710i) for LCAs and are available at HUD Clips ([www.hud.gov/program\\_offices/administration/hudclips/forms](http://www.hud.gov/program_offices/administration/hudclips/forms)) and at the Davis Bacon and Labor Standards Forms page ([www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olrform](http://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform)).

### MORE INFO

States may report directly to DOL, as the state chooses. PHAs, PHAs, and TDHEs should send data for Davis Bacon projects only; data relating to HUD determined maintenance wage rate projects or projects subject to Tribally determined wage rates (for construction or maintenance work) should not be included.



**Common errors**

The following paragraphs describe common payroll errors and the corrective steps that must be taken.

**Inadequate payroll information**

If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate (e.g., does not contain all the necessary information that would be on the optional form WH-347), the employer will be asked to resubmit the payrolls on an acceptable form.

**Missing identification numbers**

If the first payroll on which an employee appears does not contain the employee’s individually identifying number, the employer will be asked to supply the missing information. This information can be reported on the next payroll submitted by the employer if the employer is still working on the project. Otherwise, the employer will be asked to submit a correction certified payroll.

**Incomplete payrolls**

If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a correction certified payroll.

**Classifications**

If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision, or the employer may request an ad-

ditional classification and wage rate (see Section 9 in the Contractor Addendum). If reclassification results in underpayment (i.e., the wage rate reported on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees (see Section 10 in the Contractor Addendum for instructions about wage restitution).

**Wage rates**

If the wage rates on the payroll are less than the wage rates on the wage decision for the work classification reported, the employer will be asked to pay wage restitution to all affected employees.

**Indications of falsification on payrolls**

The greatest threat to construction workers entitled to a statutorily-mandated prevailing wage for their craft is from employers who know what is required, choose not to pay the required prevailing wage rates, and falsify CPRs to conceal the underpayments. Such willful violators see the workers’ underpayment as their own gain and engage in deception to increase this gain. In addition, willful violators that successfully escape detection and are not required to pay prevailing wages will continue to bid on Davis-Bacon contracts until their violations are disclosed and administrative sanctions such as debarment are imposed.

**Falsification indicators**

HUD has prepared a list and explanation of four common falsification indicators that are detectable during payroll “spot-checks.”



Information reported on payrolls that indicate falsification suggests willful, much more serious violations in terms of the amount of back wages that may be due and the number of employees affected.

Such cases most often warrant investigation, which can include on-site interviews, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case. See Appendix III-1 for an explanation of willful violations and falsification indicators.

**Apprentices and trainees**

If a copy of the employee’s registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice’s or trainee’s registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman’s wage rate for the classification of work they performed.

**Overtime**

If the employees did not receive at least time and one-half for any O/T hours worked on the project, the following will occur:

1. If the project is subject to CWHSSA O/T requirements, the employer will be asked to pay wage restitution for all O/T hours worked on the project.

The employer may also be liable to the United States for liquidated damages computed at \$26 per day per violation, and indexed to increase annually. Or,

2. If the project is not subject to CWHSSA, the employer will be notified of the possible FLSA O/T violations.

Also, the contract administrator may refer the matter to DOL for further review.

**Computations**

If the payroll computations (gross worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

**Deductions**

If there are any “Other” deductions that are not identified, or if employee authorization isn’t provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization, or explain unusual deductions, as necessary.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of CPRs that show wages paid in gross amounts (i.e., without tax deduction) for its review and appropriate action.



**Fringe benefits**

If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid (neither 4(a) nor 4(b) is marked on the Statement of Compliance), the employer may be asked to submit correction certified payrolls and will be required to pay wage restitution if underpayments occurred.

However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.

**Signature**

If the payroll Statement of Compliance is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principal of the firm and that person has not been authorized by principal to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature of a principal or other authorized signatory.

**On-site interview comparisons**

If the comparison of on-site interviews to the payrolls indicates any discrepancies (e.g., the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a correction CPR.

**Correction certified payroll**

Any and all changes to data on a submitted payroll report must be re-

ported on a certified correction payroll. In no case will a payroll report be returned to the prime contractor or employer for revision.

**Restitution for underpayment of wages**

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 CPR. If a violation of labor standards requirements results in an underpayment of wages to employees, the LCA should notify the prime contractor to either make wage restitution or direct its subcontractor to do so. Where restitution amounts are in excess of \$10 per worker, the employer must attest to wage restitution paid on a correction certified payroll.

**Notification to the Employer/Prime contractor**

The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator 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.



**Notification to the Employer/Prime contractor (continued)**

**MORE INFO**

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work with the prime contractor when the issues are complex, when there are significant underpayments, and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required documentation.

**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. Alternatively, wage restitution may be computed by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.

Total hours worked times (x) adjustment rate (DB rate - rate paid) = wage restitution due; or

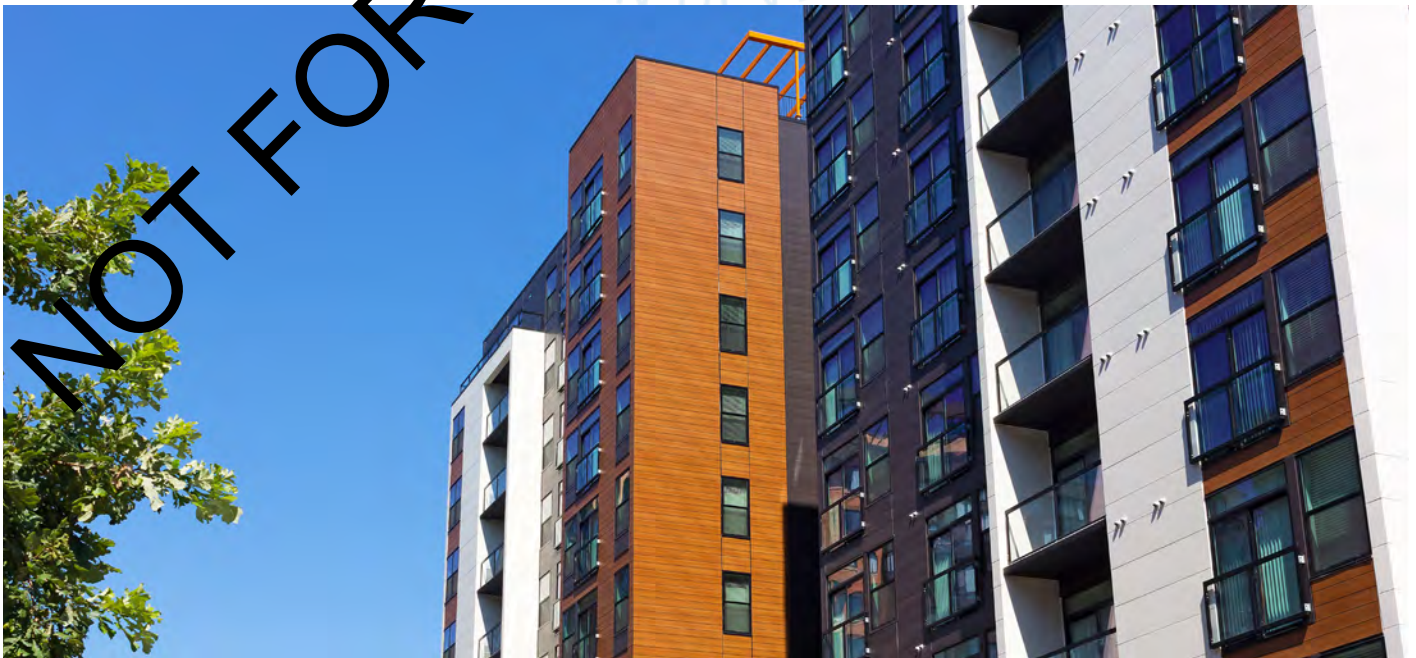
Total wages earned minus (-) total wages paid = wage restitution due.

**Correction certified payrolls**

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period for which restitution is due (e.g., Payrolls #1 through #n on a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification, the total number of work hours involved (daily hours are usually not applicable for wage restitution), 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 actually paid. A properly signed Statement of Compliance must accompany the correction payroll. HUD no longer requires the signature of the employee on the correction payroll to evidence employee receipt of restitution payment. In addition, except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashiers, canceled, or other) or employee-signed receipts or waivers.

**MORE INFO**

In the course of basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks, copies of cancelled checks, receipts signed by the employees, employee signatures on the correction CPR, etc., is not required.



**Review of correction CPR**

The contract administrator will review the correction certified 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, documented on a correction certified payroll within 30 days.

**Withholding payments due to the contractor**

If wage violations are not corrected within 30 days after notification to the prime contractor, the LCA may cause the withholding of payments due to the contractor in the amount needed to ensure the full payment of restitution and, if applicable, liquidated damages computed for CWHSSA O/T violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities should be withheld.

**Unfound workers**

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot 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 (i.e., unfound workers), providing their name, Social Security number, last known address, and the gross amount due. In such cases, at the end of the project the prime contractor will be required to place in a deposit or labor standards escrow account an amount equal to the total gross amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD. Contact the HUD LSS for your area if you encounter this situation.





## ADDITIONAL WORK CLASSIFICATION AND WAGE RATES

See Section 9 in the Contractor Addendum.

## SANCTIONS AND RESTITUTION

See Section 9 in the Contractor Addendum.

## APPENDIX

- Appendix I-1 Reorganization Plan No. 14 of 1950
- Appendix I-2 Delegation of Authority
- Appendix I-3 Labor Standards Core Work Activities
- Appendix II-1 HUD Davis-Bacon Related Acts
  - Appendix II-2 Davis-Bacon Act Copeland Anti-Kickback Act
  - Appendix II-3 Contract Work Hours and Safety Standards Act
  - Appendix II-4 Federal Labor Standards Coverage in Major HUD Programs
- Appendix II-5 Factors of Labor Standards Applicability
- Appendix III-1 HUD's Willful Violations and Falsification Applicability
- Appendix III-2 Sample Deposit Schedule
- Appendix III-3 Sample Tax Withholding Notice
- Appendix III-4 Unfound Worker Schedule
- Appendix III-5 Refund of Deposit Memorandum Template
- Appendix IV-1 Acronyms and Symbols

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Agency Name: _____	Agency Type: <small>[e.g., CDBG, PHA, TDHE/IHA]</small> _____	State: _____	DBLS Agency ID #: <small>(HUD Use Only)</small> _____
<b>Period Covered: Check One and Enter Year</b>			
<input type="checkbox"/> <b>Period 1:</b> October 1, _____ to March 31, _____	<input type="checkbox"/> <b>Period 2:</b> April 1, _____ to September 30, _____		
Agency Contact Person: _____	Agency Contact Phone/E-mail: _____		

**PART I – NEW CONTRACTING ACTIVITY**  
*Pertains ONLY to contracts awarded during the reporting period.*

1. Number of prime contracts subject to the Davis-Bacon and Related Act (DBRA) and/or the Contract Work Hours and Safety Standards Act (CWHSSA) awarded this period \_\_\_\_\_  
**Note: Do not include contracts included in previous semi-annual reports**
2. Total dollar amount of prime contracts reported in item 1 above \_\_\_\_\_

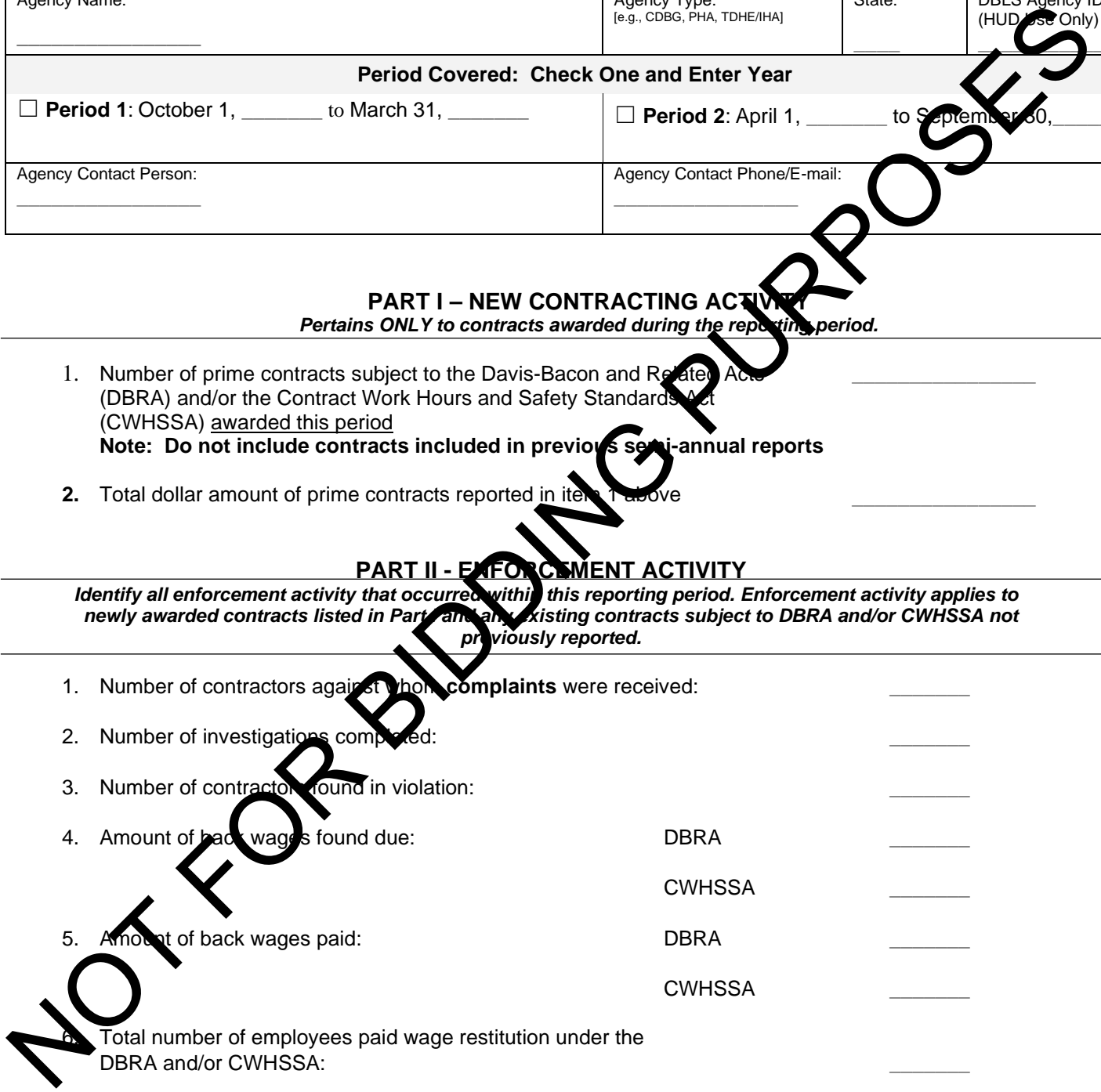
**PART II - ENFORCEMENT ACTIVITY**

*Identify all enforcement activity that occurred within this reporting period. Enforcement activity applies to newly awarded contracts listed in Part I and any existing contracts subject to DBRA and/or CWHSSA not previously reported.*

1. Number of contractors against whom **complaints** were received: \_\_\_\_\_
2. Number of investigations completed: \_\_\_\_\_
3. Number of contractors found in violation: \_\_\_\_\_
4. Amount of back wages found due:
 

DBRA	_____
CWHSSA	_____
5. Amount of back wages paid:
 

DBRA	_____
CWHSSA	_____
6. Total number of employees paid wage restitution under the DBRA and/or CWHSSA: \_\_\_\_\_
7. Total amount of liquidated damages assessed: \_\_\_\_\_



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# Section 3

## What is Section 3?

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

## How does Section 3 promote self-sufficiency?

Section 3 is a starting point to obtain job training, employment and contracting opportunities. From this integral foundation coupled with other resources comes the opportunity for economic advancement and self-sufficiency.

- Federal, state and local programs
- Advocacy groups
- Community and faith-based organizations

## How does Section 3 promote homeownership?

Section 3 is a starting point to homeownership. Once a Section 3 resident has obtained employment or contracting opportunities they have begun the first step to self-sufficiency.

Remember, "It doesn't have to be fields of dreams". Homeownership is achievable. For more information visit our [HUD website](#).

## Who are Section 3 residents?

Section 3 residents are:

- Public housing residents or
- Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below [HUD's income limits](#).

## Determining Income Levels

- Low income is defined as 80% or below the median income of that area.
- Very low income is defined as 50% or below the median income of that area.

## What is a Section 3 business concern?

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or

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- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

**What programs are covered?**

Section 3 applies to HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures.

Section 3 also applies to certain HUD-funded Housing and Community Development projects that complete housing rehabilitation, housing construction, and other public construction.

**What types of economic opportunities are available under Section 3?**

- Job training
- Employment
- Contracts

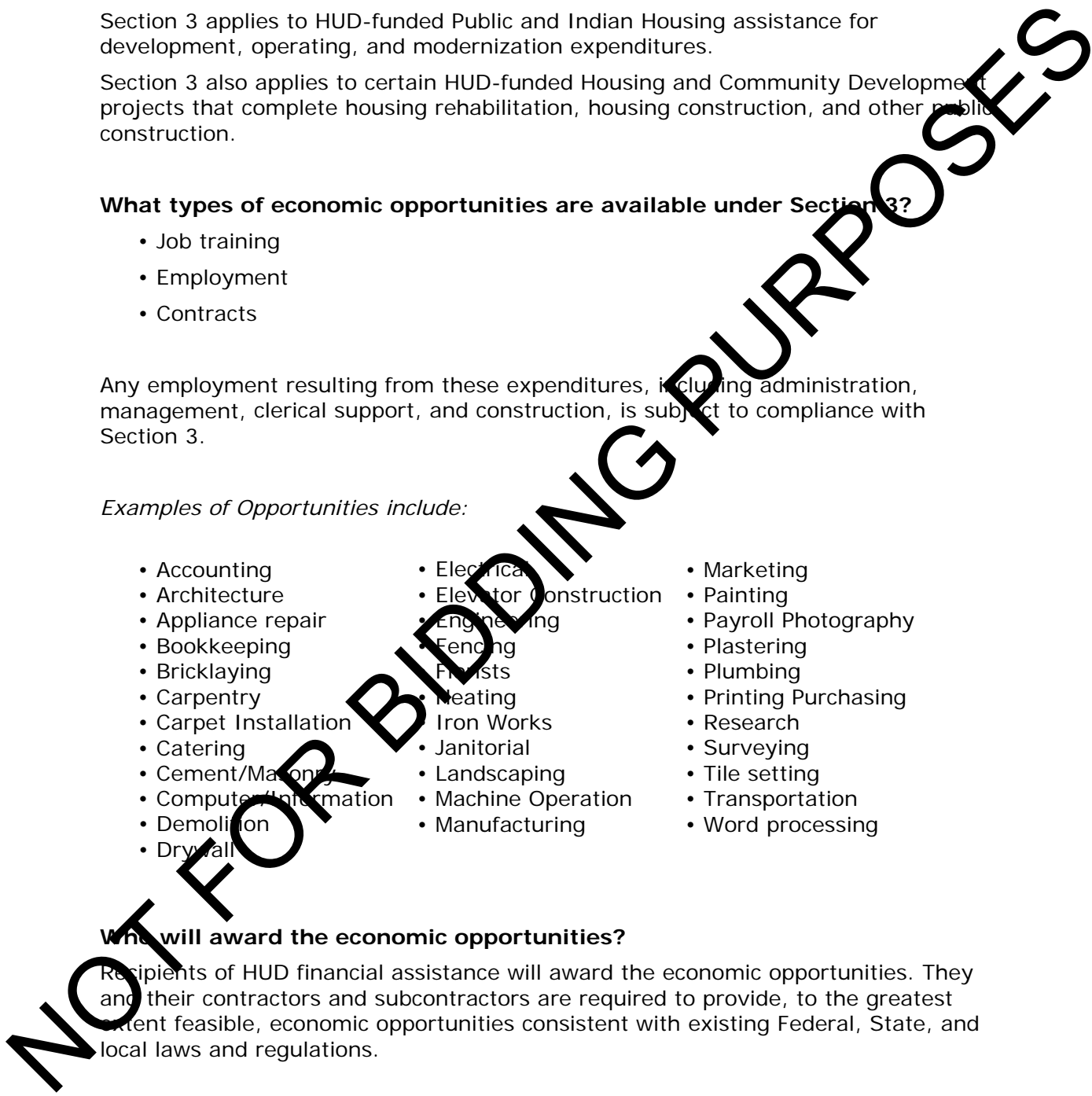
Any employment resulting from these expenditures, including administration, management, clerical support, and construction, is subject to compliance with Section 3.

*Examples of Opportunities include:*

- |                        |                         |                       |
|------------------------|-------------------------|-----------------------|
| • Accounting           | • Electrical            | • Marketing           |
| • Architecture         | • Elevator Construction | • Painting            |
| • Appliance repair     | • Engineering           | • Payroll Photography |
| • Bookkeeping          | • Fencing               | • Plastering          |
| • Bricklaying          | • Franchises            | • Plumbing            |
| • Carpentry            | • Heating               | • Printing Purchasing |
| • Carpet Installation  | • Iron Works            | • Research            |
| • Catering             | • Janitorial            | • Surveying           |
| • Cement/Masonry       | • Landscaping           | • Tile setting        |
| • Computer/Information | • Machine Operation     | • Transportation      |
| • Demolition           | • Manufacturing         | • Word processing     |
| • Drywall              |                         |                       |

**Who will award the economic opportunities?**

Recipients of HUD financial assistance will award the economic opportunities. They and their contractors and subcontractors are required to provide, to the greatest extent feasible, economic opportunities consistent with existing Federal, State, and local laws and regulations.



### **Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is spent
- Participants in HUD Youthbuild programs
- Homeless persons

### **For contracting:**

- Businesses that meet the definition of a Section 3 business concern

### **How can businesses find Section 3 residents to work for them?**

Businesses can recruit Section 3 residents in public housing developments and in the neighborhoods where the HUD assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

### **Are recipients, contractors, and subcontractors required to provide long-term employment opportunities, not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file a complaint if it seems a recipient is violating Section 3 requirements are being on a HUD-funded project.

### **Will HUD require compliance?**

Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and

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contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

**How can Section 3 residents or Section 3 business concerns allege Section 3 violations?**

You can file a written complaint with your [local HUD Field Office](#).

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section
- Statement of corrective action sought i.e. training, employment or contracts

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**APPENDIX D. NOTICE TO ALL EMPLOYEES**

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# NOTICE TO ALL EMPLOYEES

Working on Federal or Federally  
Financed Construction Projects

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## MINIMUM WAGES

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

## OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

## APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

## PROPER PAY

If you do not receive proper pay, contact the Contracting Officer listed below:

**CONTRACTING OFFICER**  
City of Auburn  
Community Development Division  
144 Tichenor Avenue  
Auburn, AL 36830  
334-501-7280

Or you may contact the nearest office of the Wage and Hour Division, U. S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U. S. Government section of most telephone directories under:

**U.S. Department of Labor**  
**Employment Standards Administration**



NOT FOR BIDDING PURPOSES

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**APPENDIX E. SECTION 3 BENCHMARKS FOR CREATING  
ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-  
INCOME PERSONS AND ELIGIBLE BUSINESSES**

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rulemaking, procurement actions, and agency programs to the extent feasible. Further, when notice and comment rulemaking is otherwise required, each agency should provide the opportunity for public comment on the rationale for the agency's conformity assessment decision.

(d) Work with other Federal agencies to avoid unnecessary duplication and complexity in Federal conformity assessment activities.

(e) Consider leveraging the activities and results of other governmental agency and private sector programs in lieu of creating government-unique programs or to enhance the effectiveness of proposed new and existing conformity assessment.

(f) Give a preference for using voluntary consensus standards, guides, and recommendations related to conformity assessment in agency operations. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs. See OMB Circular A-119 for a description of voluntary consensus standards and recommendations for their development and use by Federal agencies.

(g) Participate, as needed, representing agency and Federal viewpoints, in efforts to develop voluntary consensus standards, guideline, and recommendations related to conformity assessment.

(h) Participate, as needed, representing agency and Federal viewpoints in efforts designed to improve coordination among governmental and private sector conformity assessment activities.

(i) Work with NIST, other Federal agencies, ICSP members, and the private sector to coordinate U.S. conformity assessment needs, practices, and requirements in support of the efforts of the U.S. Government and U.S. industry to increase international trade of U.S. products and services.

(j) Assign an Agency Standards Executive the responsibility for coordinating agency-wide implementation of the guidance in this part who is situated in the agency's organizational structure such that the Agency Standards Executive is kept regularly apprised of the agency's regulatory, procurement, and other mission-related activities, and has sufficient authority within the agency to ensure implementation of the guidance in this part.

**§ 287.5 Responsibilities of Agency Standards Executives.**

Each Agency Standards Executive should:

(a) Carry out the duties in OMB Circular A-119 related to conformity assessment activities.

(b) Encourage effective use of agency conformity assessment related resources.

(c) Provide ongoing assistance and policy guidance to the agency on significant issues in conformity assessment.

(d) Contribute to the development and dissemination of:

(1) Internal agency policies related to conformity assessment issues; and

(2) Agency positions on conformity assessment related issues that are in the public interest.

(e) Work with other parts of the agency to develop and implement improvements in agency conformity assessment activities.

(f) Participate in the Interagency Committee on Standards Policy (ICSP) as the agency representative and member.

(g) Promote agency participation in ICSP working groups related to conformity assessment issues, as needed.

(h) Encourage agency participation in efforts related to the development of voluntary consensus standards, recommendations, and guidelines related to conformity assessment consistent with agency missions, authorities, priorities, and resources.

(i) Establish an ongoing process for reviewing the agency's conformity assessment programs and identify areas where efficiencies can be achieved through coordination within the agency and among other agencies and private sector conformity assessment activities.

**Kevin A. Kimball,**  
*Chief of Staff.*

[FR Doc. 2020-18745 Filed 9-28-20; 8:45 am]

**BILLING CODE 3510-13-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 75**

[Docket No. FR-6085-N-04]

**Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses**

**AGENCY:** Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

**ACTION:** Notification of benchmarks.

**SUMMARY:** Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and

Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3. Elsewhere in this issue of the **Federal Register**, HUD published a final rule that would amend the Section 3 regulations to, among other things, increase Section 3's impact, and streamline and update HUD's reporting and tracking requirements. The final rule includes a requirement that HUD set Section 3 benchmarks by publishing a notification, subject to public comment, in the **Federal Register**. If a recipient complies with the statutory priorities regarding effort and meets the outcome benchmarks in this document, HUD will presume the recipient is following Section 3 requirements, absent evidence to the contrary.

**DATES:** *Effective Date.* October 29, 2020.

**FOR FURTHER INFORMATION CONTACT:** Alastair W. McFarlane, Director, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8216, Washington, DC 20410; telephone 202-402-5845 (voice/TDD) (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, toll-free at, 800-877-8339. General email inquiries regarding Section 3 may be sent to: [section3@hud.gov](mailto:section3@hud.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, approved August 1, 1968) (Section 3) (12 U.S.C. 1701u) was enacted to ensure, to the greatest extent feasible, that economic opportunities generated by certain HUD financial assistance expenditures are directed to low- and very low-income persons, particularly those who receive Federal financial assistance for housing and those residing in communities where the financial assistance is expended.

In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce



Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. Furthermore, significant legislation has been enacted that affects HUD programs that are subject to Section 3 and that are not adequately addressed in the current Section 3 regulations. On April 4, 2019, HUD proposed a rule to update the Section 3 regulations. See 84 FR 13177. The proposed rule incorporated a change from tracking the number of Section 3 qualified new hires in public housing financial assistance and Section 3 projects, to tracking the total labor hours worked. In connection with the proposed rule, HUD issued a proposed benchmark notification. See 84 FR 13199. The proposed benchmark notification included a proposed benchmark number and the methodology for determining the benchmarks.

#### Benchmarks

For public housing financial assistance, the proposed benchmark notification provided that PHAs and other recipients would meet the safe harbor in the new § 75.13 by certifying to the prioritization of effort in the new § 75.9 and meeting or exceeding Section 3 benchmarks for total number of labor hours worked by Section 3 workers and by Targeted Section 3 workers. (See the definitions of these two categories of workers at the end of Section II of this preamble, below.) The benchmark for Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. The benchmark for Targeted Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year.

For Section 3 projects, the proposed benchmark notification set the same benchmarks but with regards to the project itself rather than the recipient's fiscal year. The proposed benchmark notification provided that recipients would meet the safe harbor in the new § 75.23 by certifying to the prioritization of effort in the new § 75.19 and meeting or exceeding Section 3 benchmarks for total number of labor hours worked by Section 3 workers and by Targeted Section 3 workers. The benchmark for Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for

Targeted Section 3 workers was set at 5 percent or more of the total number of labor hours worked by all workers on a Section 3 project.

#### Methodology

To determine these benchmarks, HUD looked at the total hours worked on a construction or development project, the total number of workers that would likely qualify as Section 3 workers, and the potential pool of Targeted Section 3 workers. In order for the Section 3 employment goal to be attainable, HUD determined a labor-hour threshold that is congruent with the labor market for low-income workers by examining the lower end of the wage distribution of the relevant industries. Based on the wage distribution data for on-site construction and building services, HUD set the threshold for Section 3 labor hours at 25 percent of all labor hours to encourage recipients, subrecipients, contractors, and subcontractors to hire more Section 3 workers for construction. For the Targeted Section 3 benchmarks, HUD estimated the number of residents of public housing or Section 3-assisted housing, of current YouthBuild participants, and of workers employed by Section 3 business concerns. HUD also examined commuting times based on U.S. Census data. Finally, HUD reviewed Community Development Block Grant program (CDBG) and HOME Investment Partnerships Program (HOME) projects to estimate the number of potential Targeted Section 3 workers available for Section 3 projects. Based on these data, HUD determined that 5 percent of all labor hours, or, in other words, 20 percent of the Section 3 labor hour threshold, was a reasonable goal for both public housing financial assistance and for Section 3 projects.

HUD sought public comment on both the proposed rule and benchmark notification and received 187 public comments, 163 public comments on the proposed rule and 24 public comments on the proposed benchmark notification. Comments on the proposed rule and notification covered both content on the rule and the benchmark numbers. Therefore, all public comments received on both the proposed rule and the proposed benchmark notification are addressed in HUD's Section 3 final rule.

#### II. Section 3 Final Rule

The Section 3 final rule creates new Section 3 regulations in 24 CFR part 75; the public can find the final rule issued elsewhere in today's **Federal Register**. The Section 3 final rule aims to make Section 3 goals and reporting more

meaningful and more aligned with statutory requirements. The final rule, consistent with HUD's Section 3 proposed rule, includes new metrics for compliance safe harbors and provides that these benchmarks will be set by notification in the **Federal Register**. The final rule separates out the new requirements and benchmarks by the type of funding, as follows:

(1) *Public housing program*: Subpart B, Additional Provisions for Public Housing Financial Assistance, covers development assistance provided pursuant to section 8 of the U.S. Housing Act of 1937 (1937 Act) and Operating Fund and Capital Fund assistance provided pursuant to section 9 of the 1937 Act, collectively; these are defined as public housing financial assistance in the proposed rule.

(2) *Other HUD programs*: Subpart C, Additional Provisions for Section 3 Projects, covers housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the amount of assistance to the project exceeds a threshold of \$200,000, and is defined as a Section 3 project. A \$100,000 project threshold applies to grants under HUD's Lead Hazard Control and Healthy Homes programs.

As for new metrics, the final rule provides, consistent with the Section 3 proposed rule, that HUD will establish the Section 3 benchmarks, through a **Federal Register** notification. The final rule provides that HUD may establish a single nationwide benchmark for work performed by Section 3 workers and a single nationwide benchmark for work performed by Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. The final rule also provides, in establishing the benchmarks, that HUD may consider the industry averages worked by specific categories of workers or in different localities or regions; prior Section 3 reports by recipients; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD would exclude professional services, which would be defined as non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. Lastly, HUD commits to updating the benchmarks no less frequently than once every three years through notice,

subject to public comment, in the **Federal Register**.

HUD created the Section 3 worker and Targeted Section 3 worker concepts so that HUD could track and set benchmarks to target selected categories of workers and to recognize the statutory requirements pertaining to contracting opportunities for business concerns employing low- and very-low income persons.

In the final Section 3 rule, HUD defines a Section 3 worker for both public housing financial assistance and Section 3 projects as a worker that meets one of the following requirements:

- The worker's income is below the income limit established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

HUD defines a Targeted Section 3 worker differently for public housing financial assistance and Section 3 projects. For § 75.11, public housing financial assistance, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a:

- Resident of public housing or Section 8-assisted housing;
- Resident of another project managed by the PHA that is expending assistance; or
- YouthBuild participant.

For § 75.21, Section 3 projects, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

HUD defines a Section 3 business concern as a business concern that meets one of the following requirements:

- It is at least 51 percent owned by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or
- It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

For more information about the final rule, HUD refers readers to the final rule published elsewhere in this issue of the **Federal Register**.

**III. Section 3 Benchmarks**

This document finalizes the benchmarks with regards to labor hours for both public housing financial assistance and Section 3 projects without changes from what was

included in the proposed benchmark notification. In the final rule, HUD is not adopting the new hires formula as proposed as an alternative in the proposed rule, so the new hires formula is accordingly not reflected in this document. HUD is finalizing the same benchmarks for all public housing financial assistance and Section 3 projects. The methodology in determining the Section 3 benchmarks, as discussed above in the Background section, did not change from what was described in the proposed benchmark notification because the definitions of Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business concerns provided in the proposed rule and adopted in the Section 3 final rule were not substantially different. Once HUD has more data, it may determine whether different benchmarks are appropriate. Please see the above summary in the Background section of this document and the proposed benchmark notification for more information.

The following benchmarks apply to recipients subject to Section 3 upon the effective date in the Section 3 final rule:

*Public Housing Financial Assistance*

For meeting the safe harbor in § 75.13, PHAs and other recipients that certify to following the prioritization of effort in § 75.9 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart B, in the absence of evidence to the contrary:

- (1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

- and
- (2) Five (5) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Targeted Section 3 workers, as defined at § 75.11.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

*Section 3 Project*

For meeting the safe harbor in § 75.23, recipients that certify to following the prioritization in § 75.19 and meet or exceed the following Section 3

benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart C, in the absence of evidence to the contrary:

- (1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

- and
- (2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

**Environmental Impact**

This document involves the establishment of new Section 3 benchmarks for creating economic opportunities for low- and very low-income persons and eligible businesses, and does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

**Benjamin S. Carson, Sr.,**  
*Secretary.*

[FR Doc. 2020-19183 Filed 9-28-20; 8:45 am]  
**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

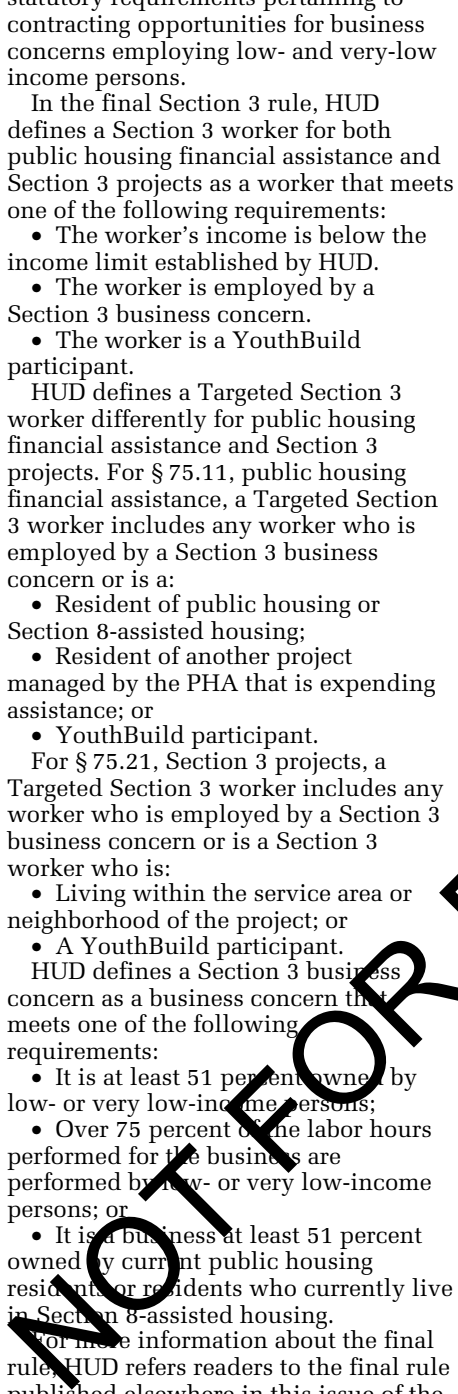
[TD 9901]

RIN 1545-BO55

**Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income; Correcting Amendment**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.



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**APPENDIX F. A CONTRACTOR'S GUIDE TO PREVAILING WAGE  
REQUIREMENTS FOR FEDERALLY-ASSISTED CONSTRUCTION  
PROJECTS**

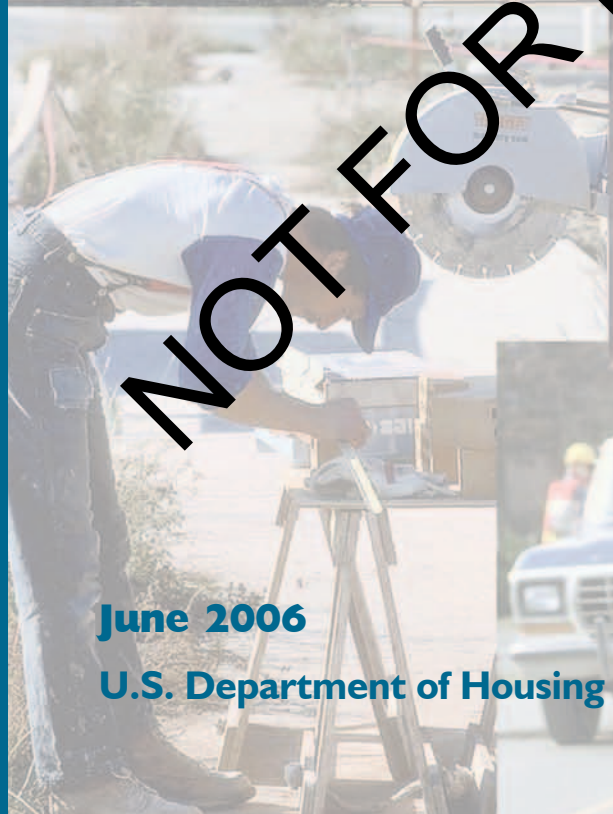
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*A Contractor's  
Guide to  
Prevailing  
Wage  
Requirements  
for  
Federally-Assisted  
Construction  
Projects*

**MAKING  
DAVIS-BACON  
WORK**

**NOT FOR BIDDING PURPOSES**



**June 2006**

**U.S. Department of Housing and Urban Development**



# MAKING DAVIS-BACON WORK

*A Contractor's Guide  
to Prevailing  
Wage Requirements  
for Federally-Assisted  
Construction Projects*

## Introduction

This Guide has been prepared for you as a contractor performing work on construction projects that are **assisted** by the Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide **does not** address contractor requirements involved in **direct** Federal contracting where HUD or another Federal agency enters into a procurement contract. In this latter case, the Federal Acquisition Regulations (FAR) are applicable. While the guidance contained in this Guide is generally applicable to **any** Davis-Bacon covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

Our objective here is to provide you with a guide which is simple and non-bureaucratic yet comprehensive and which will help you better understand and comply with Davis-Bacon labor standards. HUD's Office of Labor Relations worked closely with the Department of Labor's Wage and Hour Division to make sure that the labor standards provisions in your contract and the specifics of complying with them represent the latest information. It is the Department of Labor which has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

There are three chapters in this Guide. The first chapter offers a brief description of the laws and regulations associated with Federal labor standards administration and enforcement and discusses both what's in your contract that requires Davis-Bacon compliance and your responsibilities. The second chapter deals with labor standards and payroll reporting requirements. The third chapter discusses what can happen in the event there is a dispute about the wage rates that should be (or have been) paid and any back wages that may be due.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. Should you wish assistance in determining whether Davis-Bacon wage rates apply to a particular project or if you need other related technical assistance, please consult with the HUD Labor Relations Field staff for your area. If you don't know which staff to contact, a list of Labor Relations field offices and their geographic areas and telephone numbers can be found on HUD's Home Page at the address below.

Visit the Office of Labor Relations  
on the World Wide Web HUD Home Page at:

<http://www.hud.gov/offices/olr>

Obtain additional copies of this Guide and other publications at our web site or by telephone from HUD's Customer Service Center at (800) 767-7468.



**NOT FOR BIDDING PURPOSES**

# MAKING DAVIS-BACON WORK

*A Contractor's Guide  
to Prevailing  
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for Federally-Assisted  
Construction Projects*

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# CHAPTER I. Laws, Regulations, Contracts and Responsibilities

The following paragraphs describe what the labor standards laws and regulations actually say and what they mean to you on HUD projects:

## I-1 Davis-Bacon and Other Labor Laws

### a. The Davis-Bacon Act (DBA)

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

Most HUD construction work *is not* covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U.S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the **Davis-Bacon and Related Acts or DBRA**.

### b. The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The

CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

CWHSSA does not apply to *prime contracts* of \$100,000 or less. In addition, some HUD projects are not covered by CWHSSA because some HUD programs only provide loan guarantees or insurance. CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g., Davis-Bacon wage rates, or HUD-determined rates for operation of public housing and Indian block grant-assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter SL-95-01, *CWHSSA Coverage threshold for overtime and health and safety provisions*, available on-line at the HUD Labor Relations Library at: [www.hud.gov/offices/olr/library.cfm](http://www.hud.gov/offices/olr/library.cfm))

# MAKING DAVIS-BACON WORK

DOL Regulations are available on-line on the World Wide Web:  
[http://www.dol.gov/dol/allcfr/Title\\_29/toc.htm](http://www.dol.gov/dol/allcfr/Title_29/toc.htm)

HUD program labor standards forms are available on-line at:  
[www.hudclips.org/cgi/index.cgi](http://www.hudclips.org/cgi/index.cgi)

## c. The Copeland Act (Anti-Kickback Act)

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

## d. The Fair Labor Standards Act (FLSA)

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

## I-2 Davis-Bacon Regulations

The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in **Title 29 CFR Parts 1, 3, 5, 6 and 7**. *Part 1* explains how the DOL establishes and publishes DBA wage determinations (*aka wage decisions*) and provides instructions on how to use the determinations. *Part 3* describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. *Part 5* covers the labor standards provisions that are in your contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. *Part 6* provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, *Part 7* sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

## I-3 Construction Contract Provisions

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are often bound into the contract specifications.

### a. The Labor Standards Clauses

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-2554, Supplementary Conditions to the Contract for Construction, which is issued primarily for FHA multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects, and the HUD-5370, General Conditions of the Contract for Construction – Public and Indian Housing Program.



## b. Davis-Bacon Wage Decisions

The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved.

All current Davis-Bacon wage decisions can be accessed on-line at no cost at:

[www.wdol.gov](http://www.wdol.gov)

## I-4 Responsibility of the Principal Contractor

The principal contractor (also referred to as the **prime** or **general contractor**) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See *Contract Administrator*, below.)

To make this Guide easier to understand, the term “**prime contractor**” will mean the principal contractor; “**subcontractor**” will mean all subcontractors including lower-tier subcontractors, and the term “**employer**” will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

## I-5 Responsibility of the Contract Administrator

The **contract administrator** is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals (e.g., the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see ¶12-1, **The Wage Decision**) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see ¶12-6, **Compliance Reviews**) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. *For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Relations field staff.* But many HUD-assisted projects are administered by local contracting agencies such as Public Housing Agencies (PHAs),

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Indian tribes and tribally-designated housing entities (TDHEs), and States, cities and counties under HUD's Community Development Block Grant (CDBG) and HOME programs. In these cases, the *contract administrator* will likely be local agency staff. In either case, the guidance for you remains essentially the same.

The DOL also has a role in monitoring Davis-Bacon administration and enforcement. In addition, DOL has independent authority to conduct investigations. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.



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# CHAPTER 2.

## How to Comply with Labor Standards and Payroll Reporting Requirements

### Where to start?

Now that you know you're on a Davis-Bacon project and you know some of the legal and practical implications, what's next?

## SECTION I — THE BASICS

### 2-1 The Wage Decision

Davis-Bacon labor standards stipulate the wage payment requirements for *Carpenters, Electricians, Plumbers, Roofers, Laborers, and other construction work classifications* that may be needed for the project. The **Davis-Bacon wage decision** that applies to the project contains a schedule of work classifications and wage rates that must be followed. If you don't have it already (and by now you should), you'll want to get a copy of the applicable **Davis-Bacon wage decision**.

Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See ¶1-3, *Construction Contract Provisions*.

#### a. The Work Classifications and Wage Rates

A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications. You'll want to make sure that the work classification(s) you need are contained in the wage decision and make certain you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (for example, residential and commercial work) and can be lengthy and difficult to read. Contact the *contract administrator* (HUD Labor Relations field staff or local agency staff) if you have any trouble reading the wage decision or finding the work classification(s) you need.

To make reading lengthy wage decisions easier for you, the contract administrator may prepare a Project Wage Rate Sheet (HUD-4720). This Sheet is a one-page transcript that will show only the classifications and wage rates for a particular project. A blank copy of a Project Wage Rate Sheet is provided for you in the appendix. Also, a fillable version of this form is available on-line at HUDClips (see web address in the Appendix). Contact the contract administrator monitoring your project for assistance with a Project Wage Rate Sheet.

## b. Posting the Wage Decision

If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of a DOL poster called *Notice to All Employees* (Form WH-1321) at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The *Notice to All Employees* poster is available on-line at HUDClips (see address in the Appendix).

## 2-2 Additional "Trade" Classifications and Wage Rates

**What if the work classification you need isn't on the wage decision?** If the work classification(s) that you need doesn't appear on the wage decision, you will need to request an **additional classification and wage rate**. This process is usually very simple and you'll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you'll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

### a. Additional Classification Rules

Additional classifications and wage rates can be approved if:

- 1) The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the *county* where the project is located).
- 2) The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision you can't request another Electrician classification and rate.)
- 3) The proposed wage rate for the requested classification "fits" with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.) And,
- 4) The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers' representatives, must agree with the proposed wage rate.

### b. Making the Request

A request for additional classification and wage rate must be made in writing through the contract administrator. (If the contract administrator is a local agency, the agency will send the request to the HUD Labor Relations staff.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.



**c. HUD Review**

The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/referral letter to the DOL.

If the HUD Labor Relations staff doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the HUD Labor Relations staff will *not* approve the request. In this case, the staff will send your request to the DOL with an explanation why HUD believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

**d. DOL Decision**

The DOL will respond to HUD Labor Relations in writing about the additional classification and wage rate request. HUD Labor Relations will notify you of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision.

If the DOL *does not* approve the request, you will be notified about what classification and wage rate should be used for the work in question. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.

It's always a good idea to talk to the contract administrator before submitting an additional classification and wage rate request. The contract administrator can offer suggestions and advice that may save you time and increase the likelihood that DOL will approve your request. Usually, the contract administrator can give you an idea about what the DOL will finally decide.

**2-3 Certified Payroll Reports**

You'll need to submit a weekly certified payroll report (CPR) beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

**a. Payroll Formats**

The easiest form to use is DOL's WH-347, **Payroll**. A sample copy of the WH-347 is included in the back of this Guide. You may access a fillable version of the WH-347 on-line at HUDClips (see web address in the Appendix). Also, the contract administrator can provide a few copies of the WH-347 that you can reproduce.

You are *not required* to use Payroll Form WH-347. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the WH-347.



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## b. Payroll Certifications

The weekly payrolls are called *certified* because each payroll is signed and contains language certifying that the information is true and correct. The payroll **certification** language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347, or any other format which contains the same certification language on the WH-347 (reverse).

DOL's website has Payroll Instructions, and the Payroll Form WH-347, in a "fillable PDF format at this address: [www.dol.gov/esa/programs/dba/forms.htm](http://www.dol.gov/esa/programs/dba/forms.htm) and at HUDClips

If you number your payroll reports consecutively, you *do not* need to submit "no work" payrolls!

## c. "No Work" Payrolls

"No work" payrolls may be submitted whenever there is a temporary break in your work on the project, for example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. (See *Tip Box*, below, for "no work" payroll exemption!) However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you send a note, you do not need to send "no work" payrolls.

## d. Payroll Review and Submission

The prime contractor should **review** each subcontractor's payroll reports for compliance **prior** to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid *and* for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator *through* the prime contractor.

An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments and protect itself from financial loss should underpayments occur.

## e. Payroll Retention

Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as time cards, tax records, evidence of fringe benefit payments,



for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

**f. Payroll Inspection**

In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or from DOL.

**2-4 Davis-Bacon Definitions**

Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

**a. Laborer or Mechanic**

“Laborers” and “mechanics” mean anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, sheet metal workers, etc.), apprentices, trainees and, for CWHSSA purposes, watchmen and guards. “Laborers” and “mechanics” are the two groups of workers that must be paid not less than Davis-Bacon wage rates.

- 1) **Working foremen.** Foremen or supervisors that regularly spend **more** than 20% of their time performing construction work and do not meet the exclusions in paragraph 2 below are covered “laborers” and “mechanics” for labor standards purposes for the time spent performing construction work.
- 2) **Exclusions.** People whose duties are primarily administrative, executive or clerical are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc. (Contact the contract administrator if you have any questions about whether a particular employee is excluded.)

**b. Employee**

Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the wage decision for the classification of work they perform. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and mechanics.

**c. Apprentices and Trainees**

The only workers who can be paid less than the wage rate on the wage decision for their work classification are “apprentices” and “trainees” registered in approved apprenticeship or training

For more information about working sub-contractors, ask the contract administrator or your HUD Labor Relations Field Staff for a copy of Labor Relations Letter LR-96-01, *Labor standards compliance requirements for self-employed laborers and mechanics*. Labor Relations Letters and other helpful Labor Relations publications are available at HUD’s Labor Relations web site (see the list of web site addresses in the *Appendix*).



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programs, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work. Approved programs are those which have been registered with the DOL or a DOL-recognized State Apprenticeship Council (SAC). Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

Most often, the apprentice/trainee wage rate is expressed as a series of percentages tied to the amount of time spent in the program. For example, 0-6 months: 65%; 6 months – 1 year: 70%; etc. The percentage is applied to the journeyman's wage rate. On Davis-Bacon projects, the percentage must be applied to the journeyman's wage rate on the applicable wage decision for that craft.

- 1) **Probationary apprentice.** A "probationary apprentice" can be paid as an apprentice (less than the rate on the wage decision) if the DOL or SAC has certified that the person is eligible for probationary employment as an apprentice.
- 2) **Pre-apprentice.** A "pre-apprentice", that is, someone who is not registered in a program and who hasn't been DOL- or SAC-certified for probationary apprenticeship is **not** considered to be an "apprentice" and must be paid the full journeyman's rate on the wage decision for the classification of work they perform.
- 3) **Ratio of apprentices and trainees to journeymen.** The maximum number of apprentices or trainees that you can use on the job site can not exceed the ratio of apprentices or trainees to journeymen allowed in the approved program.

#### d. **Prevailing Wages or Wage Rates**

Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate *unless* you provide bona fide fringe benefits for your employees.

- 1) **Piece-work.** Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. For example, a Drywall Hanger's earnings may be calculated based upon the square feet of sheetrock actually hung, a Painter's earnings may be based upon the number of units painted. Employers may calculate weekly earnings based upon piece rates **provided** the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. *Accurate time records must be maintained for any piece-work employees.* If the weekly piece rate earnings are not sufficient, the employer must recompute weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.



**e. Fringe Benefits**

Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits **do not** include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

**Note** that the *total* hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/hour fringe benefits, you must pay no less than that total (\$15/hour) as the basic rate or basic rate plus whatever fringe benefit you may provide. You can meet this obligation in several ways: you could pay the base wage and fringe benefits as stated in the wage decision, or you could pay \$15 in base wage with no fringe benefits, or you could pay \$12 basic plus \$3 fringe benefits. You can also *off-set* the amount of the base wage if you pay more in fringe benefits such as by paying or \$9 basic plus \$6 fringe benefits; as long as you meet the total amount. The amount of the base wage that you may off-set with fringe benefits is limited by certain IRS and FLSA requirements.

**f. Overtime**

Overtime hours are defined as all hours worked on the contract in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

Referring to our example above where the wage decision requiring a \$15 total wage obligation (\$10 basic wage plus \$5 fringe benefits) was met by paying \$9 base wage plus \$6 fringe benefits: Note that overtime rates must be based on one and one-half times the basic rate *as stated on the wage decision*. In the above example, the employer must pay for overtime: \$15/hr (\$9 basic + \$6 fringe) plus \$5 (one-half of \$10, the wage decision basic rate) for a total of \$20 per hour.

**g. Deductions**

You may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgements and other financial obligations legally imposed against the employee.

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## h. Proper Designation of Trade

You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters even if they aren't considered by you to be fully trained as a Carpenter. **Remember**, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.

1) **Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each work classification in which work was performed **only** if you maintain accurate time records showing the amount of time spent in each classification. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.

## i. Site of Work

The "site of work" is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. "Site of work" can also include other, adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

## SECTION II REPORTING REQUIREMENTS

### 2-5 Completing a Payroll Report

#### What information has to be reported on the payroll form?

The weekly payroll form doesn't ask for any information that you don't already need to keep for wage payment and tax purposes. For example, you need to know each employee's **name**, **address** and **social security number**; his or her **work classification** (who is working for you and what do they do?), the hours worked during the week, his or her **rate of pay**, the **gross amount earned** (how much did they earn?), the amounts of any **deductions** for taxes, etc., and the **net amount paid** (how much should the paycheck be made out for?). No more information than you need to know in order to manage your work crew and make certain they are paid properly. And, certainly, no more information than you need to keep for IRS, Social Security and other tax and employment purposes.

You are required to submit certified payrolls to illustrate and document that you have complied with the prevailing wage requirements. The purpose of the contract administrator's review of your payrolls is to verify your compliance. Clearer and complete payroll reports will permit the contract administrator to complete reviews of your payroll reports quickly.

For many contractors,  
the Weekly Certified  
Payroll is the only  
Davis-Bacon paperwork  
you need to submit!



**a. Project and Contractor/Subcontractor Information**

Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the *week dates* in the spaces provided. Numbering payrolls is optional but strongly recommended.

**b. Employee Information**

The first payroll on which each employee appears must contain the employee's name, address and Social Security Number. Afterward, the address and Social Security Number only need to be reported if there is a change in this information.

**c. Work Classification**

Each employee must be classified in accordance with the wage decision based on the type of work they actually perform.

1) **Apprentices or Trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.

2) **Split classifications.** For an employee that worked in a split classification, make a separate entry for each classification of work performed distributing the hours of work to each classification, accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

**d. Hours Worked**

The payroll should show **ONLY** the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours *should not* be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for *all projects*. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.

**e. Rate of Pay**

Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you **do not** participate in approved fringe benefit programs, **add** the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.

1) **Piece-work.** For any piece-work employees, the employer **must** compute an *effective hourly rate* for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.



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The effective hourly rate must be reflected on the certified payroll and the hourly rate may be no less than the wage rate (including fringe benefits, if any) on the wage decision for the classification of work performed. It does not matter that the effective hourly rate changes from week-to-week, only that the rate is no less than the rate on the wage decision for the classification of work performed.

Remember, the overtime rate is computed at one and one-half times the *basic* rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the overtime rate would be:  
 $(\$10 \times 1\frac{1}{2}) + \$5 = \$20/\text{hour}$ .

Only one employee authorization is needed for recurring (e.g., weekly) other deductions. Written employee authorization is not required for income tax and Social Security deductions.

## f. Gross Wages Earned

Show the gross amount of wages earned for work performed on this project. *Note:* For employees with work hours and earnings on other projects, you may show gross wages for this project over gross earnings all projects (for example, \$425.40/\$764.85) and base deductions and net pay on the “all projects” earnings.

## g. Deductions

Show the amounts of any deductions from the gross earnings. “Other” deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing by the employee or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

## h. Net Pay

Show the net amount of wages paid.

## i. Statement of Compliance

The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (WH-347). Be sure to complete the identifying information at the top, particularly if you are attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. Also, you must check either 4(a) or 4(b) if the wage decision contains a fringe benefit. Checking 4(a) indicates that you are paying required fringe benefits to approved plans or programs; and 4(b) indicates that you are paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If you are paying a portion of the required fringe benefit to programs and the balance directly to the employee, explain those differences in box 4(c).

Only one Statement of Compliance is required for each employer’s weekly payroll no matter how many pages are needed to report the employee data.



**j. Signature**

Make sure the payroll is **signed** with an original signature. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent.

## SECTION III PAYROLL REVIEWS AND CORRECTIONS

### 2-6 Compliance Reviews

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. The DOL may also independently conduct its own reviews (see ¶11-5). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

**a. On-Site Interviews**

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative of HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form HUD-11, *Record of Employee Interview*, and forward the interviews to the contract administrator.

**b. Project Payroll Reviews**

The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

### 2-7 Typical Payroll Errors and Required Corrections

The following paragraphs describe common payroll errors and the corrective steps you must take.

# MAKING DAVIS-BACON WORK

## a. Inadequate Payroll Information

If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate, e.g., does not contain all of the necessary information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.

## b. Missing Addresses and Social Security Numbers

If the first payroll on which an employee appears does not contain the employee's address and Social Security Number, the employer will be asked to supply the missing information. A short note providing the information is all that is needed.

## c. Incomplete Payrolls

If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a corrected payroll.

## d. Classifications

If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision **or** the employer may request an **additional classification and wage rate** (See ¶12-2). If reclassification results in underpayment (i.e., the wage rate paid on the payroll is less than the rate required for the new classification), the employer will be asked to pay **wage restitution** to all affected reclassified employees. (See ¶12-8 for instructions about wage restitution.)

## e. Wage Rates

If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.

## f. Apprentices and Trainees

If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is *not* registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.

## g. Overtime

If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- 1) If the project is subject to CWHSSA overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project. The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,



- 2) If the project is **not** subject to CWHSSA, the employer will be notified of the possible *FLSA overtime* violations. Also, the contract administrator may refer the violations to the DOL for further review.

**h. Computations**

If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

**i. Deductions**

If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of certified payroll reports that show wages paid in gross amounts (i.e., without tax deduction) for its review and appropriate action.

**j. Fringe Benefits**

If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the Statement of Compliance], the employer may be asked to submit corrected payrolls **and** will be required to pay wage restitution if underpayments occurred. However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate *plus* the fringe benefit rate), no correction is necessary.

**k. Signature**

If the payroll *Statement of Compliance* is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principal of the firm and that person has not been authorized by principal to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature(s) of a principal or other signatory.

**l. On-Site Interview Comparisons**

If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a corrected payroll report.

**2-8 Restitution for Underpayment of Wages**

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.

**a. Notification to the Employer/Prime Contractor**

The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during



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# MAKING DAVIS-BACON WORK

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work through the prime contractor when the issues are complex, when there are significant underpayments and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required corrective documentation.

In most cases, HUD no longer requires employers to submit checks or copies of checks (certified, cashiers, canceled or other) to correct underpayments. Restitution payments are reported and certified by the employer on a correction payroll.

payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator 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.

## b. 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. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.

## c. 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 #n; or a beginning date and ending date). The correction payroll will list each employee to whom restitution was paid and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); 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 actually paid. A signed Statement of Compliance must be attached to the correction payroll.

## d. Review of Correction CPR

The contract administrator will review the correction certified 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, documented on a supplemental correction payroll within 30 days.

## e. Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers) providing their names, Social Security Numbers, last known addresses and the gross amount due. In such cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for 3 years after the completion of the project. After 3 years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD.



## CHAPTER 3. Labor Standards Disputes, Administrative Reviews, Withholding, Deposits and Escrow Accounts, and Sanctions

What happens when things go wrong?

### 3-1 Introduction

Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, “things going wrong” usually means there’s a difference of opinion or a dispute about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before the DOL; or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of what you may expect and what you can do to make your views known and to lessen any delays in resolving the problem or issue.

### 3-2 Administrative Review on Labor Standards Disputes

As mentioned in the Introduction above, a dispute about labor standards and compliance can arise for a number of reasons. The labor standards clauses in your contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

#### a. Additional Classifications and Wage Rates

Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.

- 1) **Reconsideration.** The DOL normally identifies the reasons for denial in its response to the request. Any interested person (for example, the contract administrator, employer, representatives of the employees) may request reconsideration of the decision on the additional classification request. The request for reconsideration must be made in writing and must thoroughly

# MAKING DAVIS-BACON WORK

address the denial reasons identified by the DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to the DOL. (See 12-2(d), and also DOL Regulations 29 CFR 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through the HUD Headquarters Office of Labor Relations.

- 2) **Administrative Review Board.** Any interested party may request a review of the Administrator's decision on reconsideration by **DOL's Administrative Review Board**. DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (See also 29 CFR 1.9.)

## b. Findings of Underpayment

Compliance reviews and other follow-up/enforcement actions may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due and, of course, to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies.

If informal exchanges do not result in agreement, the final determination and schedule of back wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) or to request a hearing on the matter before the DOL. The request for hearing must be made in writing through the contract administrator and must explain what findings are in dispute and the reasons. In such cases, HUD is required to submit a report to DOL for review and further consideration. All requests for DOL hearing must be submitted through the HUD Headquarters Office of Labor Relations.

- 1) **DOL review.** The DOL will review the contract administrator's report and the arguments against the findings presented in the hearing request. The DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by the DOL of the results of its review; you will be given an opportunity to correct any underpayments or to request a hearing before a DOL Administrative Law Judge (ALJ). (See DOL Regulations 29 CFR 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings.)
- 2) **Administrative Review Board.** Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

## 3-3 Withholding

The contract administrator shall cause withholding from payments due to the prime contractor to ensure the payment of wages which are



believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor. DOL may also direct the withholding of contract payments for alleged wage underpayments. Withholding is considered to be serious and is not taken unless warranted. If withholding is deemed necessary, you will be notified in writing. Only the amounts needed to meet the contractor's (and/or subcontractors') liability shall be withheld.

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See ¶1-4, *Responsibility of the Principal Contractor*, and ¶12-8, *Restitution for Underpayment of Wages*.

### 3-4 Deposits and Escrows

In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow projects to proceed to final closing and payments **provided** the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or *escrow account* is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- a. **Where the parties have agreed to amounts of wage restitution that are due** but the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages, e.g., some of the workers have moved and could not be located. The amount of the deposit is equal to the total amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who can not be located are held in the deposit/escrow account for three years and disbursed as described in ¶12-8(e) of this Guide.
- b. **Where underpayments are suspected or alleged and an investigation has not yet been completed.** The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (See ¶12-8(e) and 3-4(a)).

If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained in ¶13-4(c), below.

# MAKING DAVIS-BACON WORK

- c. **Where the parties are waiting for the outcome of an administrative hearing** that has been or will be requested contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

## 3-5 Administrative Sanctions

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or DOL.

### a. DOL Debarment

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (**debarred**) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or can be initiated by the DOL. Debarment proceedings are described in DOL regulations 29 CFR 5.12.

### b. HUD Sanctions

HUD sanctions may include Limited Denials of Participation (LDPs), debarments and suspensions.

1) **LDP.** HUD may issue to the employer a limited denial of participation (LDP) which prohibits the employer from further participation in HUD programs for a period up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDP's are found at 24 CFR 24.700-24.714.

2) **Debarment and suspensions.** In certain circumstances, HUD may initiate its own debarment or suspension proceedings against a contractor and/or subcontractor in connection with improper actions regarding Davis-Bacon obligations. For example, HUD may initiate debarment where a contractor has been convicted for making false statements (such as false statements on certified payrolls or other prevailing wage certifications) or may initiate suspension where a contractor has been indicted for making false statements. HUD regulations concerning debarment and suspension are found at 24 CFR Part 24.

## 3-6 Falsification of Certified Payroll Reports

Contractors and/or subcontractors that are found to have willfully falsified payroll reports (Statements of Compliance), including correction certified payroll reports, may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison for each false statement (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

Remember, if you have any questions or need assistance concerning labor standards requirements help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Relations staff in your area.



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## Acronyms and Symbols

CDBG	– Community Development Block Grant
CFR	– Code of Federal Regulations
CPR	– Certified Payroll Report
CWHSSA	– Contract Work Hours and Safety Standards Act
DBA	– Davis-Bacon Act
DBRA	– Davis-Bacon and Related Acts
DOL	– Department of Labor
FHA	– Federal Housing Administration
FLSA	– Fair Labor Standards Act
HUD	– Housing and Urban Development (Department of)
IHA	– Indian Housing Authority
LCA	– Local Contracting Agency
LDP	– Limited Denial of Participation
O/T	– Overtime
PHA	– Public Housing Agency
S/T	– Straight-time
SAC	– State Apprenticeship Council/Agency
TDHE	– Tribally-Designated Housing Entity
§	– Section
¶	– Paragraph

## Davis-Bacon – Related Web Sites\*

HUD Office of Labor Relations:  
[www.hud.gov/offices/olr](http://www.hud.gov/offices/olr)

HUD Regulations:  
[www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)

HUDClips (Forms and Publications):  
[www.hudclips.org/cgi/index.cgi](http://www.hudclips.org/cgi/index.cgi)

DOL Davis-Bacon and Related Acts Homepage:  
[www.dol.gov/esa/programs/dbra/index.htm](http://www.dol.gov/esa/programs/dbra/index.htm)

DOL Regulations:  
[www.dol.gov/dol/allcrf/Title\\_29/toc.htm](http://www.dol.gov/dol/allcrf/Title_29/toc.htm)

Davis-Bacon Wage Decisions:  
[www.wdol.gov](http://www.wdol.gov)

DOL Forms:  
[www.dol.gov/esa/programs/dbra/forms.htm](http://www.dol.gov/esa/programs/dbra/forms.htm)

\*Web addresses active as of June 2006

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# Project Wage Rate Sheet

U.S. Department of Housing and Urban Development  
Office of Labor Relations

PROJECT NAME:			WAGE DECISION NUMBER/MODIFICATION NUMBER:			
PROJECT NUMBER:			PROJECT COUNTY:			
WORK CLASSIFICATION	BASIC HOURLY RATE (BHR)	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	LABORERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Bricklayers			\$			\$
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	OPERATORS FRINGE BENEFITS:		\$
Plumbers			\$	GROUP #	BHR	TOTAL WAGE
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Layers			\$			\$
Tapers			\$			\$
Tile Setters			\$	TRUCK DRIVERS FRINGE BENEFITS:		\$
OTHER CLASSIFICATIONS				GROUP #	BHR	TOTAL WAGE
			\$			\$
			\$			\$
			\$			\$
ADDITIONAL CLASSIFICATIONS (HUD Form 4230-A)						
WORK CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	DATE OF HUD SUBMISSION TO DOL		DATE OF DOL APPROVAL
			\$			
			\$			
			\$			
			\$			

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U.S. Department of Housing and Urban Development  
Office of Labor Relations  
Washington, DC 20410

Official Business  
Penalty for Private Use \$300

Return Service Requested

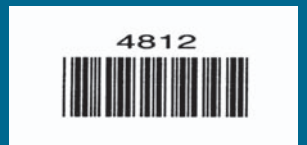
STANDARD MAIL  
POSTAGE & FEES PAID  
HUD  
Permit No. G-795

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Labor Relations Desk Guide  
LR01.DG



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**APPENDIX G. FORM WH-1321  
EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT**

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# EMPLOYEE RIGHTS

## UNDER THE DAVIS-BACON ACT

### FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

#### PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

#### OVERTIME

You must be paid not less than one and one half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

#### ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

#### APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

#### PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

[Empty box for Contracting Officer contact information]

or contact the U.S. Department of Labor's Wage and Hour Division.

NOT FOR BIDDING PURPOSES



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



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**APPENDIX H. FORM WH-1321 SPANISH (WH 1321 SPA)  
(DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON)**

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# DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

## PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

### SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

### SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

### CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

### APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

### PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:

NOT FOR BIDDING PURPOSES

o póngase en contacto con la División de Horas y Salarios del Departamento de Trabajo de los EE.UU.



DIVISIÓN DE HORAS Y SALARIOS  
DEPARTAMENTO DE TRABAJO DE LOS EE.UU.

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



**NOT FOR BIDDING PURPOSES**

**APPENDIX I. FORM WH-347  
U.S DEPARTMENT OF LABOR PAYROLL**

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**PAYROLL**

(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

OMB No.: 1235-0008  
Expires: 07/31/2024

NAME OF CONTRACTOR	OR SUBCONTRACTOR	ADDRESS
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT	OR	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
					HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
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NOT FOR BIDDING PURPOSES

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the Fair Labor Standards Act prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

**Public Burden Statement**

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

