

Section 24 – Labor Standards Policies and Procedures



MODESTO
CALIFORNIA

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Background

The City of Modesto is an entitlement community awarded Department of Housing and Urban Development (HUD) funds annually to address housing needs, improve and develop communities, and enforce fair housing laws. HUD funding requires compliance with Davis Bacon and Related Acts (DBRA).

Applicability of Davis Bacon and Related Acts (DBRA):

The **Davis-Bacon Act** (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7). Davis-Bacon labor standards requirements are triggered at different thresholds under the CDBG and HOME Program, which is defined below. These labor standards require that workers receive no less than the prevailing wages being paid for similar work in the same area. HUD should be contacted if there is any situation where the applicability of Davis-Bacon is in question.

The **Copeland Anti-Kickback Act** (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors and subcontractors maintain and submit weekly certified payrolls.

The **Contract Work Hours and Safety Standards Act (CWHSSA)** (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to prime contracts over \$100,000 and any subcontracts let under the covered prime contract. CWHSSA requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).

Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD- financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Please see the Fair Housing chapter of this manual for more information.

Applicability of Davis Bacon Labor Standards:

Community Development Block Grant (CDBG)

The labor laws that may apply to CDBG-funded construction work include the following: The Davis-Bacon Act (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) is triggered when construction work over \$2,000 is financed in whole or in part with CDBG funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account labor (construction carried out by employees of the grantee). HUD should be contacted if there is any situation where the applicability of Davis-Bacon is in question.

HOME/HOME ARP Investment Partnership Program

The applicability of labor standard provisions under the HOME program is very different than under CDBG. Labor standards provisions apply to any contract for the construction of 12 or more HOME-assisted units. (Section 286, National Affordable Housing Act of 1990, as amended).

Bidding and Contracting:

Once it is determined that a construction project is subject to Federal labor standards requirements, certain the following must be taken to ensure compliance:

1. Labor Standards Officer (LSO) is informed of all projects assisted with HUD funds.
2. LSO must review and approve the project Bid Specifications to ensure it includes the HUD specific forms including but not limited to:
 - a. Davis Bacon Federal Wage Determination from US Department of Labor (WD available at time of bid release)
 - b. California Industrial Relations Wage Determination
 - c. Federal Labor Standards Provisions Form HUD-4010,
 - d. Federal Classification/Prevailing Wage Sheet
 - e. Section 3 Compliance Packet/Forms
 - f. MBE/WBE/Section 3 Contract & Subcontract Activity
3. Once the General Contractor is selected for the project, LSO obtains from the contractor a list of subcontractors (MBE/WBE/Section 3 Contract & Subcontract Activity list?) to be used on the project and verifies using Sam.gov that the contractor and subcontractors are not listed on the Federal government's Excluded Parties List prior to contract execution by using each contractor/subcontractor's DUNS number.
 - a. If a contractor/subcontractor does not have a DUNS Number, they must obtain one at: <https://fedgov.dnb.com/webform/>
4. DUNS verification is maintained in file documentation.
5. The Davis-Bacon wage Determination that applies to a project at the time of bid request release and included within the Bid Specifications contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing work on the project.
 - a. The City department responsible for preparing the Bid Specifications will download the applicable Federal Wage Determination from <https://beta.sam.gov/content/home> , and physically attach to the Bid Specifications.
 - b. LSO will use verify that the appropriate Federal wage determination was used during review of the Bid Specifications by checking <https://beta.sam.gov/content/home> .
 - c. LSO will use also use DIR.CA.gov to determine the appropriate State wage determination. Although this is not a Federal requirement LSO ensures wages are paid in accordance with California Industrial Relations Wage Determination.
 - d. Ten days prior to bid opening, LSO will verify any modifications made to the Davis-Bacon wage Determination and lock in the wage Determination using both Beta.SAM.gov.

6. All federal job classifications to be used by the general contractor and subcontractors must be disclosed by the General Contractor upfront via submission of Federal Classification/Prevailing Wage Sheet included with its Bid.
 - a. Upon selection of the General Contractor, any changes and/or addition of job classifications must be disclosed to the City's HUD project manager to allow compliance monitoring.
 - b. The use of Apprentices and Trainees by the General Contractor and/or Subcontractors must be disclosed on the Federal Classification/Prevailing Wage sheet included with General Contractor's bid.
 - i. Apprentices and trainees may be paid less than the journeyman's rate for their craft only if registered in a program approved by the US DOL or a state apprenticeship agency recognized by DOL. Apprentice and/or trainee pay rates must be disclosed with bid submission.
 1. If apprentice and/or trainee is not registered in a US DOL approved program, the apprentice/trainee must be paid the journeyman's rate of pay.
 - ii. Apprentice vs. Journeymen ratios must be disclosed by the General Contractor with its Bid submission.
 1. LSO will review apprentice vs journeyman ration during the certified payroll review process.
7. The labor clauses, which are contained in HUD-4010, and the applicable wage rate Determination (and any additional classifications), must be a physical part of the bid package.
- 8.
9. The labor clauses obligate the contractor and subcontractors to comply with the Davis-Bacon wage and reporting requirements and provide remedies and sanctions should violations occur.
10. LSO examines subrecipient/subgrantee/subcontract management firm contract activity as required.
11. For contracts entered into pursuant to competitive bidding procedures, the bid opening date "locks-in" the wage decision provided that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date 'locks-in' the wage decision.

Construction:

Pre-construction Conference:

LSO will attend the Pre-construction conference. The Pre-construction conference will review contractual requirements including labor and performance schedules. Items that should be covered at the pre- construction conference include:

1. LSO provides and reviews with the contractor a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." This guide can be downloaded from at:
<https://www.hud.gov/sites/documents/4812-LRGUIDE.PDF>
2. LSO will review all required HUD/Labor compliance forms to be submitted during project construction.
3. LSO explains that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors.
4. LSO explains that wages paid must conform to the Federal wage rate Determination included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact the City HUD project manager immediately.
5. LSO explains that employee interviews will be conducted periodically during the project.
 - a. The document used to capture interviews is the Form HUD-11. The form is to be used by HUD and local agency staff for recording information gathered during on-site interviews with laborers and mechanics employed on projects subject to Federal prevailing wage requirements. Typically, the staff that will conduct on-site interviews and use this form are HUD staff and fee construction inspectors, HUD Labor Relations staff, and local agency labor standards contract monitors.
 - b. Information recorded on the form HUD-11 is evaluated for general compliance and compared to certified payroll reports submitted by the respective employer. The comparison tests the veracity of the payroll reports and may be critical to the successful conclusion of enforcement actions in the event of labor standards violations. The thoroughness and accuracy of the information gathered during interviews is crucial.
 - c. Note that the interview itself and the information collected on the form HUD-11

Note that the interview itself and the information collected on the form HUD-11 are considered confidential. Interviews should be conducted individually and privately. All laborers and mechanics employed on the job site must be made available for interview at the interviewer's request. The employee's participation, however, is voluntary. Interviews shall be conducted in a manner and place that are conducive to the purposes of the interview and that cause the least inconvenience to the employer(s) and the employee(s).

6. LSO emphasizes that a copy of the Federal wage rate Determination must be posted at the job site.
7. LSO explains that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the US Department of Labor. If apprentices or trainees are to be used, the contractor must provide the LSO with a copy of the DOL certification of his/her program.
 - a. LSO explains that apprentice or trainee must be paid journeyman rates if they are not registered with US DOL.
8. If the contract is \$100,000 or greater, LSO explains that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
9. LSO explains that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
10. LSO instructs contractor to obtain and post posters for the job site, such as the "Notice to All Employees Working on Federal or Federally Financed Construction Projects." These posters and others that are required are available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>.
11. LSO also describes the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

Notice to Proceed

1. Following execution of the contract documents and completion of the pre-construction conference, a Notice to Proceed is issued to the prime/general contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date, and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages is to be consistent with those sections of the contract documents.

On-Site Interviews

1. The labor standards requirements include periodically conducting job site interviews with workers. The purpose of the interviews is to capture observations of

the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.

- LSO performs monthly on-site interviews: one interview per craft per contractor per month, with a minimum of three prime contractor interviews each month and one interview per subcontractor each month.
- 2. Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a reasonable judgment as to compliance.
- 3. Target interviews will be conducted when deemed necessary due to potential or suspected violations.
- 4. Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).
 - a. The interview should take place on the job site and conducted privately (this is a one-on-one basis).
 - b. LSO observes the duties of workers before initiating interviews.
 - c. To initiate the interview, the LSO shall:
 - i. Properly identify himself/herself;
 - ii. Clearly state the purpose of interview; and
 - iii. Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
 - d. When conducting employee interviews, the LSO pays particular attention to:
 - i. The employee's full name;
 - ii. The employee's permanent mailing address;
 - iii. The last date the employee worked on that project and number of hours worked on that day. LSO clarifies that these questions relate solely to work on the project and not other work.
 - iv. The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage Determination.
 - 1) The LSO ensures the worker is not quoting their net hourly rate or "take-home" pay.
 - 2) If it appears the individual may be underpaid, the LSO closely questions the worker:
 - 3) Ask for any records.
 - 4) Arrange to re-interview the employee
 - 5) In the case additional follow-up is required LSO will mail-out a questionnaire.
 - v. Enter the worker's statement of his/her classification.
 - vi. Observe duties and tools used:
 - 1) If worker's statements and observations made by the LSO indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.

- 2) If there are discrepancies, detailed statements are necessary.
 - vii. Enter any comments necessary.
 - viii. Enter date interview took place.
5. The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information, during certified payroll review.
 - a. If no discrepancies appear, "None" is written in the comment space of the Payroll Examination Remarks Section (#16) and is signed by the LSO.
 - b. If discrepancies do appear, write the observed discrepancies in the Payroll Examination Remarks Section (#16) and LSO initiates appropriate action. When necessary and these actions have been completed, the results must be noted on the interview form.
6. If there are wage complaints, the LSO completes the Federal Labor Standards Complaint Intake Form (HUD Form 4731). The complaint must be investigated and resolved and contact HUD as necessary.

Certified Payroll Review

1. Once construction is underway, the prime/general contractor should complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.
2. Certified payroll reports should be submitted by the prime/general contractor to the LSO within a reasonable timeframe so as to ensure compliance, typically no more than 10 working days following the end of the payroll period.
3. The HUD payroll form (WH-347) does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).
4. The payrolls should be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and, potentially, liquidated damages that may be assessed for overtime violations.
5. LSO reviews payroll to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no other falsifications using City of Modesto Payroll Checklist form.
6. Items to be spot- checked should include:
 - o The correct classification of workers;

- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
 - A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
 - Review of deductions for any non-permissible deductions; and
 - The Statement of Compliance has been signed by the owner or an officer of the firm.
7. Any discrepancies and/or falsification indicators must be reported to the state and HUD, along with the steps being taken by the LSO to resolve the discrepancies. Where underpayments of wages have occurred, the LSO and state are responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. LSO and state should contact HUD for assistance if a violation occurs.

Payments

1. Upon receipt of requests for payment during construction, the LSO checks that labor standards compliance is being met.
 - a. All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved; and
 - b. Employee interviews have been conducted as necessary, checked against payrolls and the wage rate Determinations, and all discrepancies corrected.
2. Ten percent retention is held until after the certified payroll review process is complete, in case of any unresolved problems.
 - All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved;
 - All discrepancies identified through job site interviews have been resolved; and
 - All files are complete.

Restitution for Underpayment of Wages

1. 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.
2. Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage Determination 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.
3. LSO will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the

restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.

4. The employer is 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. The correction payroll must list:
 - a. Each employee to whom restitution is due and their work classification;
 - b. The total number of work hours;
 - c. The adjustment wage rate (the difference between the required wage rate and the wage rate paid);
 - d. The gross amount of restitution due;
 - e. Deductions; and
 - f. The net amount to be paid.
5. A signed Statement of Compliance must be attached to the corrected payroll form and each employee who has received restitution should sign the corrected payroll as evidence of their receipt of the payments.
6. The LSO reviews the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

Documentation Requirements

7. The LSO maintains documentation to demonstrate compliance with the labor standards requirements including, but not limited to:
 - a. Bid and contract documents with the labor standards clause and wage Determination;
 - b. Payroll forms from the contractor and subcontractors, including signed statements of compliance;
 - c. Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
 - d. Documentation of investigations and resolutions to issues that may have arisen and
 - e. Enforcement reports
8. The labor standards compliance documents are kept on file by LSO per project.
9. The standard compliance documents are preserved and retained for a period of five years following the completion of work.