

Vol. 4

Federal Labor Standards Compliance Manual

(Insert Program Office Name)

Davis-Bacon and Related Acts
Compliance Manual

Vol. 4

Davis-Bacon and Related Acts Compliance Manual

Volume 4

This Manual is a guide for personnel who manage CDBG and HOME program subrecipients with interpretations of statutory provisions, procedures for conducting investigations, and basic administrative guidance.

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Community Development Block Grant (CDBG)

For CDBG, Federal labor standards provisions apply to construction work financed in whole or in part with CDBG funds of more than \$2,000. (Section 110, Housing and Community Development Act of 1974, as amended.)

“...in whole or in part...”: Notice that the statute anticipates that CDBG funds may be used in conjunction with other funding sources. If CDBG funds are used to finance only a portion of the construction work, labor standards are applicable to the entire construction work.

“All laborers and mechanics employed by contractors and subcontractors...”: The covered classes of workers are those employed by “contractors and subcontractors.” Consequently, the labor standards provisions do not apply to employees of **(insert program jurisdiction)** (force account workers) who are not employed by contractors or subcontractors who may be engaged on an otherwise covered project. (Note that the construction work is covered but force account workers are excluded.)

“...shall apply to the rehabilitation of residential property only if such property contains not less than eight (8) units.” This language represents an exemption for residential property that contains up to seven (7) units. Typically, single-family homeowner properties are excluded under this exemption. However, property is not limited to a specific building. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project. Examples of eight (8) or more unit properties may include: five (5) townhouse buildings side-by-side which consist of two (2) units each, three (3) apartment buildings each consisting of five (5) units and located on one tract of land, or eight (8) single-family (not homeowner) houses located on contiguous lots.

HOME Investment Partnerships (HOME)

HOME Program; The applicability of labor standard provisions under the HOME program is quite different than 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.)

“...affordable housing with 12 or more units assisted with funds made available under this subtitle...”: Unlike CDBG, the standard for coverage is “assisted” not “financed” – which

provides for much broader application. This means that the Davis Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2).

This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, HUD uses the number of units identified as "HOME" units under the program definition whether determined on a pro-rata basis, specific designation or other means permitted by HUD's Office of Community Planning and Development (CPD).

Note that once Davis-Bacon requirements are triggered, the labor standards are applicable for the construction of the entire project – including the portions of the project that are not assisted with HOME funds.

“Any contract for the construction of affordable housing with 12 or more units assisted with funds...”: Davis-Bacon requirements are applicable to contracts for construction covering 12 or more HOME-assisted units. Davis-Bacon requirements do not follow “construction work” or “projects”. This factor has two implications: First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.) Second, if multiple HOME projects containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

Sweat Equity: HOME provides for a “sweat equity” provision (see NAHA Section 255) that permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

Applicable Labor Laws

The **Davis-Bacon Act** (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7). These labor standards require that workers receive no less than the prevailing wages being paid for similar work in the same geographic area.

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 workers to 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 under the covered prime contract. CWHSSA requires workers receive overtime compensation (*time and one-half pay*) for hours worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).

Definitions

The following terms are important to know when understanding the statutory and regulatory provisions of the Davis-Bacon and Related Acts:

Apprentice - An apprentice is a person employed and individually registered in a bona fide apprenticeship program, including Step-Up apprenticeship programs designed for Davis-Bacon covered construction work. Bona fide programs are those that have been registered with the OL Bureau of Apprenticeship and Training (BAT) or with a BAT-recognized State apprenticeship Agency (SAC).

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 the BAT 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."

Employee - Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that is alleged to exist between a contractor or subcontractor and such a person.

Fringe Benefits - Fringe benefits include medical or hospital care; pensions on retirement or death; unemployment benefits; life insurance; vacation or holiday pay; defraying costs of apprenticeship or similar programs; or other bona fide fringe benefits. In addition to contributions,

fringe benefits may reflect the rate of costs to the employer, which may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program. Fringe benefits do not include benefits required by other Federal, state, or local laws.

Laborer/Mechanic - “Laborers” or “mechanics” are those individuals whose duties are manual or physical in nature and include workers who are performing the work of a trade (e.g., electrician). These terms include apprentices, trainees, helpers and, for contracts subject to CWHSSA, watchmen, and guards.

Lock-in - Finalize wage decision at contract award date or the construction start date, whichever occurs first.

Working Foremen - Foremen or supervisors that perform construction work and devote more than 20 percent of their time as a laborer or mechanic are treated as laborers or mechanics for labor-standards purposes.

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

Overtime - Overtime hours are defined as all hours worked in excess of 40 hours in any given work week. Covered overtime hours are those that are worked at the site of the work to which CWHSSA applies. Overtime hours are compensated at not less than one and one-half times the regular rate of basic pay plus the straight time rate of any required fringe benefits.

Piece rate/piece work - Persons that are paid a fixed rate for the completion of a unit or action. Compliance with prevailing wage rates is determined by dividing the gross wages earned by the total number of hours worked to calculate the “effective” hourly wage rate. This effective rate will be at least as much as the prevailing wage for the type of work performed. The effective hourly rate will be calculated on a weekly basis.

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 after construction has been completed. The site of work includes other adjacent or virtually adjacent property used by the contractor/subcontractors in the construction of the project (e.g., fabrication sites) provided that 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.

Trainee - A trainee is a person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the BAT Wage

Definitions

Determination or Wage Decision. This document lists prevailing wage rates, as determined by the DOL, for construction laborers and mechanics in various work classifications within a particular geographic area.

Wages - The term "wages" refers to the basic hourly rate of pay plus any contribution irrevocably made by a contractor or subcontractor (employer) to a bona fide fringe benefit fund, plan, or program.

Responsibilities

Responsibilities for carrying out Federal labor standards include, but are not limited to, the following:

- Determine the applicability of Davis-Bacon labor standards provisions to the project.
- Obtain appropriate wage determination, which indicates the current prevailing pay rates for various labor classifications in the area of the project, and ensure that it is included in the bid package and contract documents.
- Ensure that all bid documents and construction contracts contain appropriate labor standards clauses (HUD-4010)
- Verify the eligibility of the contractor prior to final selection of the contractor.
- Determine whether a pre-construction conference is needed (optional). A preconstruction conference is no longer required by HUD, but the (insert program office name) will conduct pre-construction conferences in some circumstances, such as when dealing with contractors unfamiliar with Davis-Bacon requirements. As this provides the office the opportunity to review all facets of the project, including Davis-Bacon requirements with experienced and inexperienced contractors.
- Review weekly payroll reports (WH-347) to verify compliance; including the use of the correct wage rate determination, proper work classification, number of hours worked and the hourly rate of pay for each employee on a project. These reports will be submitted by prime contractors and subcontractors.
- Monitor construction contractors by conducting site visits to interview employees regarding their wages. Investigate violations of labor standards regulations and make recommendations for contractor suspension/debarment when sufficient evidence of a violation has been documented.
- Complete and submit the Semi-Annual Enforcement Report form (HUD-4710). The form and instructions for its completion (HUD-4710i) are available on HUD's web site and HUDClips.

Bidding and Contracting Requirements

If a construction project is subject to federal labor standards requirements, certain steps must be taken to ensure compliance. Specifically, all applicable labor standards language and appropriate wage decisions must be included in the construction bid and contract document.

Wage Decisions

The Davis-Bacon wage decision that applies to a project contains a schedule of work/job classifications and the minimum wage rates that will be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work. The federal wage rate decisions can be accessed through the internet at www.wdol.gov.

Federal wage determinations are generally issued for four types of construction work: Residential, Building, Heavy, and Highway. It is important to understand the differences when determining which construction type is involved in order to select the correct wage determination.

- **Residential** projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
- **Building** construction generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies, and apartment buildings greater than four (4) stories high. This includes all construction within and including the exterior walls, both above and below grade.
- **Heavy** construction is generally considered for all construction not properly classified as highway, residential, or building. Construction of dams, bridges, water, sewer line and flood control projects will typically be categorized as heavy construction.
- **Highway** projects include construction, alteration or repair of roads, streets, highways, runways, parking areas, sidewalks and most other paving work not incidental to building or heavy construction.

Note: If a work classification is needed for the project does not appear on the appropriate wage decision, the (insert program office name) will request an additional classification and corresponding wage rate from the HUD Office of Labor Relations.

HUD will consider whether the requested work classification and wage rate will be approved. All requests are forwarded to DOL for final determination. HUD should be consulted if there are questions about properly identifying the type of wage determination and/or modifications.

Labor Clauses and Wage Decisions Documentation

The labor clauses, which are contained in HUD-4010, and the applicable wage rate decision will be a physical part of the bid package or incorporated into the bid package by reference. The labor clauses obligate the contractor to comply with the Davis-Bacon Wage and Reporting requirements, and provide remedies and sanctions should violations occur.

Ten (10) days prior to bid opening, the (insert program community programs specialist) will check to see if the wage decision has been modified. If so, an addendum will be issued identifying the modified wage decision. The wage decision will **“lock-in” at bid opening provided the contract is awarded within 90 days.** If the contract is not awarded within 90 days (after the bid opening), modifications to the wage determination(s) will be incorporated into the contract, unless DOL approves an extension of the 90-day period. The (insert program office name) will request any such extension through the HUD Office of Labor Standards.

Types of Construction “Substantial vs. Incidental”

A project may include construction items that are classified differently with regard to type of construction. If the item is justified as a substantial part of the project, the use of multiple wage determinations may be warranted. More than one type of wage determination is appropriate if items fall into a separate type of construction and will comprise at least 20% of the total project cost and/or cost \$1 million dollars.

Generally, if the items fall into a separate type of construction, and will be less than 20% of the total project cost and will cost less than \$1 million dollars, they are considered incidental to the primary type of construction involved on the project. A separate wage determination is not applicable, unless there is an established local area practice to the contrary.

Where multiple wage determinations are used the (insert program office name) will incorporate determinations into the bid specifications/contract and provide instructions specifying the contract work to which each wage determination applies.

Such instructions are needed not only when the wage classifications for different types of construction (and/or locations) are in separate “Wage Decisions,” but also where wage determinations for various types of construction (and/or counties) have been consolidated into a single “Wage Decision.” (This has often been done for administrative convenience in issuing the Wage decision).

Pre-Construction Conference

Pre-construction conferences will be used to clearly present the Federal statutory compliance requirements as well as performance expectations. Items that should be covered at the preconstruction conference include, but are not limited to:

- Provide and review with the contractor a copy of the “*Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*.” This guide can be downloaded at:
<https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors-guide-prevailing-wage-requirements/>.
- Ensure the contractor will submit weekly payrolls with 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.
- Explain that wages paid will conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact HUD immediately to request an additional classification.
- Explain that employee interviews will be conducted periodically during the project.
- Emphasize that a copy of the applicable wage rate decision and the Davis-Bacon poster (WH-1321) must be posted at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency recognized by BAT. If apprentices or trainees are to be used, the contractor will provide the (insert program office name) with a copy of the individuals' registration in the apprenticeship program.

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 programs. 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.

- If the prime contract amount is \$100,000 or greater, explain that workers will 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 for overtime hours worked violates the Contract Work Hours and Safety Standards Act. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$100 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
- Explain 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 from the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
- Give the contractor posters that provide information to their employees regarding their rights when working on a Federal or “federally assisted” construction project. These posters are available at: <https://webapps.dol.gov/elaws/posters.html> and <https://www.dol.gov/whd/programs/dbra/wh1321.htm>
- Describe the compliance monitoring that will be conducted during the project, and indicate discrepancies and underpayments discovered as a result of compliance monitoring will be resolved prior to making final payment to the contractor. Remind the contractor that willful violations may be subject to contract termination and debarment from future contracts for up to three (3) years. Failure to pay specified wages may result in contractor payments being withheld to satisfy liabilities for unpaid wages and liquidated damages.

Notice to Proceed

Following execution of the contract documents and completion of the Pre-Construction Conference, it is typical practice to issue a Notice to Proceed to the Prime/Contractor. The Notice to Proceed marks the start of contract performance and, if applicable, provides the basis for assessing liquidated damages.

Payroll Review

Once construction is underway, the prime/general contractor will complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor will also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. To ensure compliance, certified payroll reports should be submitted promptly by the prime/general contractor to the (insert program office name)

Our Office uses the DOL payroll form (WH-347) however, if a contractor chooses to utilize an alternative payroll documentation, it must be approved by the Office and must include all of the same elements in order to determine compliance with applicable regulations. The Statement of Compliance will be completed and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).

The contractor can submit the documentation one of two ways:

- Signed by an owner or officer of the firm or an authorized representative of the owner or officer of the company. The signature will be an original signature and the (insert program office name) will retain the original copy. The prime contractor and any subcontractors will maintain a copy of the payrolls for no less than 3 years following completion of the work.
- Certified and submitted electronically through the use of an acceptable electronic payroll system. Electronic submission does not include the signed pdf files, faxed or emailed copies.

The payrolls should be reviewed by the prime 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.

The (insert program office name) will review/spot-check payrolls to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no discrepancies or violations.

Items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;

- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions
- The Statement of Compliance has an original signature by the owner, officer of the firm or authorized representative.
- The Payroll and Statement of Compliance are originals or are certified and submitted electronically. Photocopies are not permissible. Where underpayments of wages have occurred, the (insert program office name) is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution will be paid promptly in the full amounts due, less permissible and authorized deductions. Where corrections are made, ensure that they are reported on a certified payroll report.

Interviews

Interviews should be conducted in the following manner:

- **Interviewer:** All Davis Bacon related projects will require staff to conduct interviews. The interviewer must be someone unaffiliated with the contractors and on site regularly (i.e., project manager, or consultant, etc.).
- **Purpose:** The purpose of the interview is to ensure that the work actually being done by construction workers and mechanics is consistent with the corresponding job titles and wages being reported on the certified payrolls. The payroll checker must compare the interviews to the payrolls to identify inconsistencies. Any inconsistencies must be addressed. Keep in mind that both the interview and the information on the interview form are considered confidential. Interviews should be conducted individually and in private. All employees on the work site should be available for an interview if requested by the interviewer; however, the employee's participation is voluntary.
- **Number of Interviews:** Employee interviews must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any. They also must be a representative sample of all classifications of employees. The interviewer will interview at least one employee from every contractor and subcontractor company on the job site.
- **Timing:** Interviews will be done, at minimum, on two different occasions. One will be within the first two weeks after construction begins and whenever a new subcontractor begins work on the project. The second round will be done closer to substantial completion while

workers are still on site. Additional interviews will be done when issues or discrepancies arise and will be targeted at the contractor in question.

Initiating the Interview

The interview should take place on the job site and be conducted privately (this is a one on-one process). Interviews are confidential.

The interviewer should observe the duties of workers and take notes before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.

**Note: It is not necessary to interview Supervisors unless they are doing at least 20% manual labor on the project. If interviewed, Supervisors should be interviewed while doing manual labor.*

To initiate the interview, the authorized person shall:

- Properly identify himself/herself;
- Clearly state the purpose of interview; and
- Advise the worker that information given is confidential, and his/her identity will be not disclosed to the employer only with the employee's written permission.

When conducting employee interviews, the interviewer should pay particular attention to:

- The employee's full name;
- The employee's permanent mailing address;
- The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
- The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
- If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - (a) Ask for any records.
 - (b) Arrange to re-interview the employee, if appropriate.
 - (c) Enter the worker's statement of his/her classification.
- Observe duties and tools used:
 - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.

- If there are discrepancies, detailed statements are necessary. Enter any comments necessary. Enter date interview took place.
- Sign the HUD-11.

The Record of Employee Interview form (HUD-11) will be compared to the corresponding contractor and subcontractor payroll information.

- If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and signed by the person who made the comparison.
- If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results will be noted on the interview form. Appropriate steps will be taken to resolve the discrepancies.

Process Payments

Upon receipt of requests for payment during construction, the (insert program office name) will check that labor standards compliance is being met by,

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

Final Payment

When construction work has been completed, the contractor will submit a final request for payment. Before making final payment, (insert program office name) will ensure that:

- 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

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution will be paid promptly in the full amounts due, less permissible and authorized deductions.

In many cases, 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. This approach may not be appropriate to calculate wage restitution for piece rate employees because these employees are not paid per hour.

The (insert program office name) 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.

The employer is required to report the restitution paid on a correction certified payroll. The correction payroll must reflect the period of time for which restitution is due (e.g., payroll #'s 1 through 6; or a beginning date and ending date).

The correction payroll must list:

- Each employee to whom restitution is due and their work classification;
- The total number of work hours;
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid);
- The gross amount of restitution due;
- Deductions; and
- The net amount to be paid. A signed Statement of Compliance must be attached to the corrected payroll form.

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

In the event, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located at the end of the project the (insert program office name) will contact the prime contractor and require them 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 (insert program office name) will continue to attempt 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 forwarded to HUD, along with a schedule showing the employee(s) name, last known mailing address, full Social Security Number and the amount they were to be paid.

Documentation and Reporting Requirements

The (insert program office name) will maintain documentation to demonstrate compliance with the labor standards requirements including, but not limited to:

- Bid and contract documents with the labor standards clause and wage decision;
- Payroll forms from the prime contractor and subcontractors, including signed statements of compliance;
- Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
- Documentation of compliance violations that may have arisen (e.g., payments to workers for underpayments of wages or overtime); and
- Enforcement reports.

The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected are not unduly exposed to financial or personal risk.

The standard compliance documents will be preserved and retained for a period of three years following the completion of work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure, including:

- Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);
- Do not include Social Security Numbers on documents and records unless it is absolutely necessary. Only include the last 4 digits of the Social Security Number or an identifying number.
- Do not disclose the identity of any informant; and
- Dispose of documents and records containing sensitive information responsibly.

Reporting to HUD is required whenever an employer is found to have underpaid its employees by \$1,000 or more. In addition, reports on all covered contracts awarded and on all enforcement actions taken are reported every six months. The (insert program office name) will submit Semi-

Documentation and Reporting

Annual Report (HUD-4710) Form DOL covering all Davis-Bacon construction activity for each 6 month period.

The Semi-Annual Report form (HUD-4710) and instructions (HUD-4710i) are available on HUD's web site and HUDClips (<https://www.hud.gov/hudclips>).

The (insert program office name) will utilize the Davis Bacon Checklist in Appendix G to ensure full compliance with Davis Bacon Wage Requirements.

Appendix A – Davis Bacon Resources

- ✓ Davis-Bacon Wage Determinations: <https://beta.sam.gov/>
- ✓ DOL DBRA Homepage: <https://www.dol.gov/whd/govcontracts/dbra.htm>
- ✓ DOL Regulations: <https://www.dol.gov/regulations>
- ✓ DOL Forms: <https://www.dol.gov/general/forms>
- ✓ Making Davis Bacon Work (HUD Publication): A Practical Guide for States, Indian Tribes and Local Agencies
- ✓ https://www.hud.gov/program_offices/davis_bacon_and_labor_standards
- ✓ Making Davis Bacon Work: A Contractor's Guide to Davis-Bacon
- ✓ https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform

Appendix B – Federal Labor Standards Provision (HUD-4010)

Appendix

Federal Labor Standards Provisions

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

Applicability

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

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

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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form HUD-4010 (06/2009)
ref. Handbook 1344.1

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

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

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

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

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

4. Apprentices and Trainees.

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

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

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ref. Handbook 1344.1

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

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

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

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

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

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

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

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

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

Appendix C – Sample 1 WH-347 Payroll Form

SAMPLE ONE INSTRUCTIONS

U.S. Department of Labor (DOL) Certified Payroll Forms, WH-347

This payroll form addresses the following fact pattern:

- Owner individually performs some Davis-Bacon Act (DBA) laborer or mechanic work and has two employees working for him.
- Bona fide owners who are exempt pursuant to DOL Fair Labor Standard Act (FLSA) regulations, found at 29 CFR Part 541.101, are not laborers and mechanics and are not subject to the DBA. For an owner to be considered exempt under the FLSA regulations and therefore not subject to the DBA, the owner must own at least a bona fide 20 % equity interest in the enterprise and be actively engaged in its management. Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.
- Owners of a business who also perform construction work list themselves on the certified payroll and under the column for "Work Classification" insert the word "owner."
- One of the employees, Ralph Brown, only performed DBA work and worked overtime. The other employee, Jim Dodge, performed both DBA work and non-DBA work but did not work any overtime.
- DBA work is performed in two different counties for different community action agencies by the same contractor.
- The contractor pays (and has always paid) \$16.00 an hour to all employees, a wage rate that is slightly higher than the highest prevailing wage rate of the two counties in which DBA work is performed.

The contractor's wage rate covers the DBA fringe rate in cash. The prevailing wage rates are taken from the wage determinations created by the U.S. Department of Energy (DOE) which are available at

<https://www.dol.gov/whd/recovery/dbsurvey/weather.htm>.

DOL Prevailing Wage Rates	
Counties	Weatherization Worker
Barnstable	\$13.00 + 1.80
Plymouth	\$14.39 + 1.22

Date 09/23/2009I, Sam Harrison Payroll Coordinator
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

Jack Smith DBA Energy Savers Contractors on the
(Contractor or Subcontractor)DOE ARRA WAP Work; that during the payroll period commencing on the
(Building or Work)14 day of 9, 2009, and ending the 18 day of 9, 2009.

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Jack Smith DBA Energy Savers Contractors from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

See deductions column in payroll form.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS



in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH



Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

Sam Harrison, Payroll Coordinator

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Appendix D – Employee Interview Form

EMPLOYEE INTERVIEW FOR DAVIS-BACON LABOR STANDARDS INSTRUCTIONS

Record of Employee Interview Instructions	U.S. Department of Housing and Urban Development Office of Labor Relations	OMB Approval No. 2501-0009 (exp. 10/31/2010)
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Instructions

General:

This 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.

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.

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).

Completing the form HUD-11

Items 1a - 1c: Self-explanatory

Items 2a – 2d: Enter the employee's full name, a telephone number where the employee can be reached, and the employee's home address. Many construction workers use a temporary address in the locality of the project and have a more permanent address elsewhere from which mail may be forwarded to them. Obtain a more permanent address, if available. Ask the employee for a form of identification (e.g., driver's license) to verify their name.

Items 3a – 4c: Enter the employee's responses. Ask the employee whether they have a pay stub with them; if so, determine whether the pay stub is consistent with the information provided by the employee.

Items 5 – 7: Be certain that the employee's responses are specific. For example, job classification (#5) must identify the trade involved (e.g., Carpenter, Electrician, Plumber) – responses such as "journeyman" or "mechanic" are not helpful for our purposes.

Items 8 – 12b: Self-explanatory

Items 13 – 15c: These items represent some of the most important information that can be gathered while conducting on-site interviews. Please be specific about the duties you observed the employee performing. It may be easiest to make these observations before initiating the interview. Please record any comments or remarks that may be helpful. For example, if the employee interviewed was working with a crew, how many workers were in the crew? Was the employee evasive?

The level of specificity that is warranted is directly related to the extent to which interview(s) or other observations indicate that there may be violations present. If interviews indicate that there may be underpayments involving a particular trade(s), the interviewer is encouraged to interview as many workers in that trade(s) that are available.

Items 16 – 17b: The information on the form HUD-11 may be reviewed for general compliance, initially. For example, are the job classification and wage rate stated by the employee compatible with the classifications and wage rates on the applicable wage decision? Are the duties observed by the interviewer consistent with the job classification?

Once the corresponding certified payroll reports are received, the information on the HUD-11 shall be compared to the payroll reports. Any discrepancies noted between the HUD-11 information and that on the payroll report shall be noted in Item 16, Remarks. If discrepancies are noted, follow-up actions to resolve the discrepancies must be taken.

Form HUD-11 (08/2004)

Record of Employee Interview

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

OMB Approval No. 2501-0009
(exp. 01/31/2021)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name		
1b. Project Number			2b. Employee Phone Number (including area code)		
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code		
			2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>		
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits?	4c. Pay stub?
				Vacation Yes <input type="checkbox"/> No <input type="checkbox"/> Medical Yes <input type="checkbox"/> No <input type="checkbox"/> Pension Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Your job classification(s) (list all) — continue on a separate sheet if necessary					
6. Your duties					
7. Tools or equipment used					
8. Are you an apprentice or trainee?		Y <input type="checkbox"/> N <input type="checkbox"/>	10. Are you paid at least time and 1/5 for all hours worked in excess of 40 in a week?		Y <input type="checkbox"/> N <input type="checkbox"/>
9. Are you paid for all hours worked?		Y <input type="checkbox"/> N <input type="checkbox"/>	11. Have you ever been threatened or coerced into giving up any part of your pay?		Y <input type="checkbox"/> N <input type="checkbox"/>
12a. Employee Signature			12b. Date		
13. Duties observed by the Interviewer (Please be specific.)					
14. Remarks					
15a. Interviewer name (please print)		15b. Signature of interviewer		15c. Date of interview	

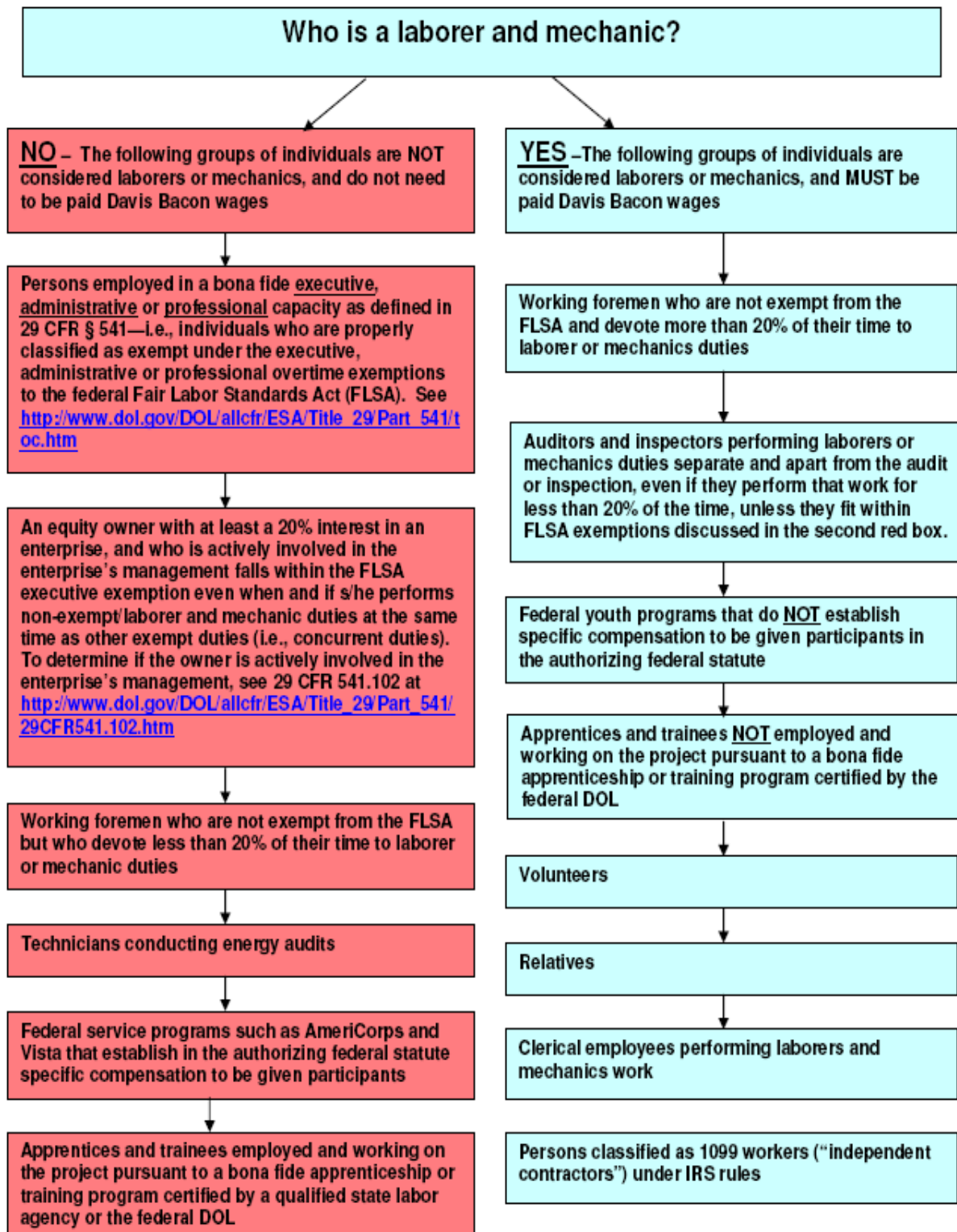
Payroll Examination

16. Remarks	
17a. Signature of Payroll Examiner	17b. Date

Previous editions are obsolete

Form HUD-11 (02/2019)

Appendix E – Laborer vs. Mechanic



EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

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:

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



For additional information:
1-866-4-USWAGE
 (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH-1321 (Revised Apr 2006)

DERECHOS DEL EMPLEADO

BAJO LA LEY DAVIS-BACON

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

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

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.

SOBRETIEMPLO

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:

Jessica DeLora
Mountainland Association of Governments
Community and Economic Development Program
Coordinator
Direct Line: 801-229-3831

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV



U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

Appendix G – Davis-Bacon Checklist

General Information						
Contract/Subcontract #:	Award Date:		Customer Name:	Period of Performance:		
Project Name:	U.S. Government:	<input type="checkbox"/>	Contract Amount:	Date of Checklist:		
	State/Local:	<input type="checkbox"/>				
Contract Administrator Name:			Project Manager Name:			
Pre-Award / Bid Phase			Yes	No	N/A	Date
1. Does the contract contain the DBA Clause (or a Related Act clause)?						
2. Does the contract incorporate a wage determination (WD) or collective bargaining agreement (CBA)?						
3. Does the incorporated WD(s) or CBA(s) cover the areas of performance?						
4. Does the incorporated WD(s) or CBA(s) cover the labor categories for performance?						
a. If the answer to the previous question is "no," has a conformance request been submitted?						
b. Has the Department of Labor approved the request?						
5. Does the bid include compensation for DBA wages and fringe benefits?						
Post-Award / Project Setup Phase			Yes	No	N/A	Date
6. Has the project been setup to calculate required wages and benefits?						
7. Are covered employees setup to receive required wages and benefits?						
8. Is the payroll system configured for weekly payment of wages and benefits?						
9. Is the project WD(s) and DBA poster displayed at all project construction sites (English -& Spanish)?						

10. Have DBA-covered subcontractors, if any, been properly vetted (i.e., flow downs, certifications, indemnifications, audit rights)?				
Project Execution Phase	Yes	No	N/A	Date
11. In aggregate, do each covered employee's wages and benefits exceed the required minimums?				
a. <i>Confirm benefits provided are bona fide fringe benefits</i>				
12. Have weekly certified payroll reports been completed and provided to the Contracting Officer?				

Question	Explanation/Instruction	Status		
		Yes	No	N/A
Verification of Certified Payrolls				
1. Are you maintaining all certified payrolls for at least three years?	For auditing purposes, maintain all certified payrolls for at least three years after the project is completed. Certification signatures must be original.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you using subcontractors to assist in construction, and are the subcontractor's certified payrolls included in the files?	All laborers working on BTOP-funded construction sites, not just those employed by you, must be paid at least Davis-Bacon prevailing wages. You should collect certified payrolls from all subcontractors whose laborers assist in construction work.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you (and any subcontractors) use optional form WH-347 to record payroll?	Form WH-347 (or a payroll form of choice, provided it contains all of the information required on WH-347) presents a standardized method of recording payroll, which assists NTIA, DOL, and any other entities in verifying Davis-Bacon compliance. The form & DOL instructions for completing may be downloaded at https://www.dol.gov/whd/forms/wh347instr.htm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Do your payroll records include the following for each individual laborer:	Though you are not required to use WH-347 to record payrolls, certain information must appear in your payroll records. Ensure that the following has been included for each individual laborer:			
a. Name?	Each laborer's full name must be listed on the row in which his or her wages are recorded. In the case of an audit, this allows NTIA, DOL, or other auditors to match employees and interviewees with their reported wages.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Individual identifying Number?	Each laborer must also have an individual identifying number. This is often the last 4 digits of that employee's social security number, although awardees and subcontractors will occasionally use unique employee ID numbers.			
c. Labor classification?	The WD labor classification assigned to each laborer must be included. If, for instance, employee John Smith's work duties correspond to the "Electrician" labor classification in the project's WD, "Electrician" should be listed here. (This is sometimes called "Work Classification" instead of "Labor Classification").	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Number of hours worked broken down by day?	The certified payroll must show how many hours each employee worked on each day covered by the certified payroll. You, and any subcontractors, should record all hours in excess of 40 as overtime.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

e. Hourly rate of pay?	This number must be greater than or equal to the prevailing wage established in the project's WD. When recording the base hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Gross amount of standard, overtime, and fringe benefit compensation?	Contractor, and any subcontractors, must record the gross amount earned by each employee prior to deductions for items such as taxes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Legally permissible deductions for items such as income taxes or social security?	Contractor, and any subcontractors, must record all deductions made from an employee's compensation for items such as income taxes or social security taxes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Net wages paid?	Contractor, and any subcontractors, must record the net amount paid to each employee after deductions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Apprentices	Does the contractor employ apprentices?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If yes, does the contractor maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	The allowable ratio of apprentices to journeymen laborers on the job site in any craft classification is not greater than the ratio permitted to the contractor as to the entire work force under the registered program.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>6. Do your payroll records include a statement of compliance signed by the person authorized to supervise wages?</p>	<p>As an accompaniment to the certified payroll, an authorized representative from your project must sign a statement of compliance that attests to the fact that all laborers were paid the amount reflected on the certified payroll, which was not less than the Davis-Bacon prevailing wage. Any subcontractors must also have an authorized representative sign such a statement for their payrolls. The statement(s) of compliance does not need to be notarized.</p> <p>If you, or any subcontractors, are using WH-347, a template version of the statement of compliance is included on the second page of the form.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Verification of Davis Bacon Compliance</p>				
<p>7. Do your contracts include the required Davis-Bacon contract clauses (29 CFR Section 5.5(a)(1) through (a)(10)?</p>	<p>The Davis-Bacon Act requires that certain contract clauses be present in your contracts. Any work orders used by you should be reviewed on-site to ensure that they include the required clauses. The required clauses are found at 29 CFR section 5.5(a)(1) through (a)(10), and are accessible at https://beta.sam.gov/content/home/.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>8. Are laborers being paid weekly?</p>	<p>The Davis-Bacon Act requires that all laborers are paid weekly. As most modern payrolls are bi-weekly, it can be challenging for awardees and subcontractors to meet this requirement. Determine whether you, or any subcontractors, pay laborers working on BTOP construction sites weekly.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appendix

9. Have the proper counties been selected for each WD?	Ensure that the WDs chosen by you match the county or counties in which BTOP-funded construction will occur. Be aware that some counties will have different wage rates within them (e.g., a county could have a different rate in the northern half than in the southern half).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Cross reference your WD and certified payrolls. Did the gross compensation paid to each laborer meet or exceed the minimum combination of base rates and fringe benefits?	Review your, and any subcontractor's, certified payrolls to ensure that all laborers are paid adequate wages under Davis-Bacon.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Do the WD and certified payrolls reconcile with the WD included in the construction contract?	A construction contract must include information on the WD and labor categories that will carry out the work specified in the contract. Ensure that the WD and payroll records being maintained by you correlate to the information included with the construction contract.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Do you maintain evidence of wage verification interviews with your laborers and subcontractor's laborers?	DOL Davis-Bacon regulations require interviews with the laborers and mechanics performing the contract or project work. Ensure that you have conducted and documented wage verification interviews with your laborers and subcontractor's laborers. Documentation verifying that wage verification interviews took place may include SF-1445. See https://www.gsa.gov/forms-library/labor-standards-interview-0	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appendix

Explain any "No" responses below:	
Preparer Name & Signature:	Date: