



**COMMUNITY DEVELOPMENT BLOCK GRANT & HOME
PROGRAMS**

FEDERAL COMPLIANCE MANUAL

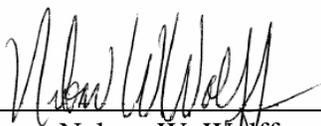
REVISED AUGUST 22, 2006

ADMINISTERED BY:

**BEXAR COUNTY
CDBG & HOME Divisions**

FEDERAL COMPLIANCE MANUAL

The County of Bexar, qualifying as an Urban County through the Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG)/HOME Program is responsible for assuring conformity with applicable program requirements as established by HUD. Bexar County's CDBG & HOME Division is the administering agency and is charged with the responsibility of compliance as described herein and is mandated to pass on these requirements to those contracting with the County to carry out these programs.



Nelson W. Wolff
County Judge

August 22, 2006

Date

The _____, as contractor, agrees to comply with all federal requirements and related administrative procedures governing the use of HUD funds, as specified in this Federal Compliance Manual, and with any changes or other new or applicable federal regulations propagated during the course of project implementation.

Principal

Company Name

Date

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INTRODUCTION

Procedures established for the administration of the Community Development Block Grant (CDBG)/HOME Program require adherence to several other applicable Federal regulations. To aid in the identification of those regulations, and to establish uniformity in policies and procedures utilized for compliance with them, the Bexar County CDBG & HOME Division has compiled the attached "Federal Compliance Manual." The Manual is in no way meant to constitute a complete compilation of all duties imposed upon project sponsors by law or administrative ruling or to narrow the standards which such sponsors must follow.

The Manual is assembled to provide project sponsor responsibilities under each applicable Federal regulation. Identification, description, and inclusion of defined contract stipulations or requirements are outlined for each regulation specifically referenced in Title I of the Housing and Community Development Act of 1974. A table of contents identifying these regulations, and a "definition" section are included. Examples of reporting and other formats are also provided. Copies of all HUD forms required for compliance are attached to the Manual. Applicable laws and regulations discussed in Section I is on file in the Bexar County CDBG & HOME Division.

As Federal regulations are subject to change, amendments to this Manual will be issued by the Bexar County CDBG & HOME Division, as needed. Certain requirements defined in this Manual may not be the direct duty of the entity designated; nevertheless, the entity has ultimate responsibility for seeing that the requirement is met. All county departments, agencies, and other contractors receiving CDBG/HOME funds for the operation of a project are required to adhere to all applicable regulations included in this Manual.

Bexar County CDBG & HOME Division has been designated as administrator of the HUD grant for the County of Bexar. Any questions, interpretations, or clarifications required should be directed to this Department.

**Bexar County CDBG & HOME Division
Community Development Block Grant Program
233 N. Pecos, Suite 590
San Antonio, Texas 78207
(210) 335-6648**

ii. DEFINITIONS

1. County Judge - The "Chief Executive Officer" authorized by Commissioners Court to enter into agreements on behalf of Bexar County.
2. Commissioners Court - Governing and policy-making body of Bexar County.
3. Contractor - A public or private entity contracting with the County for the implementation of a project or a program. As used in this Manual, the terms operating agency, sponsor, contractor, prime contractor, and project sponsor may be

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interchangeable.

4. CDBG - Community Development Block Grant.
5. DOL - The United States Department of Labor.
6. Environmental Review - An assessment of the impact that federally-funded activities will have on the quality of the human environment in the area where such activities are being undertaken.
7. Grantee/Recipient - Any entity receiving direct assistance for a project from HUD, including, but not limited to, mortgagors, developers, local public bodies, non-profit or limited dividend sponsors, builders or property managers.
8. HCD - The Housing and Community Development Act of 1974, as amended, under Title I that authorizes and provides funds for the administration of the CDBG Program.
9. HUD - The United States Department of Housing and Urban Development.
10. Issuing Office - The office which is identified as the sole point of contact in the RFQ or RFP.
11. OMB - The United States Office of Management and Budget.
12. Programs and Activities - Those undertakings of the contractor funded in whole or in part by the grant.
13. Project Sponsor/Subrecipient - Small cities, public or private non-profit and for-profit organizations responsible for the administration and execution of a project funded with CDBG/HOME funds.
14. Subcontractor - Any entity (other than a contractor or a person who is an employee of the contractor) that furnishes supplies or services to a contractor (other than standard commercial supplies, office space or printing services).

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I. Section One: Management Guidelines

- A. Federal Management Circular A-87. This Circular sets forth cost principles applicable to grants and contracts with State and local governments. This Circular provides principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the federal government.
 - 1. Project Sponsors must ensure that all costs charged against the CDBG/HOME budget are allowable costs as defined in FMC A-87. Indirect costs charged must be in conformance with the County's "Cost Allocation Plan."
- B. 24 CFR Part 85. This part establishes uniform administrative rules for federal grants and cooperative agreements and sub-awards to state, local and Indian tribal governments.
- C. Office of Management and Budget Circular A-122. This circular establishes principles for determining costs of grants, contracts, and other agreements with non-profit organizations.
 - 1. Project Sponsors must ensure that all costs charged against the CDBG/HOME budget are allowable costs as defined in OMB A-122.
- D. 24 CFR Part 84. This part establishes uniform administrative requirements for federal grants and agreements awarded to institutions of higher education, hospitals and other non-profit organizations.
- E. It is the Project Sponsor's responsibility to ensure that:
 - 1. Records effectively identify the source and application of funds for grant-supported activities.
 - 2. Financial records, supporting documents, statistical records, and all other records pertinent to the grant program are retained for a period of three years. County procedures require retention of all records and supporting documentation applicable to the contract with the County for a period of three years after the receipt of the final payment from the County. In the event a contractor goes out of existence, it shall notify the County of that fact and arrange to turn the project records over to the County. The County shall receive such records and retain them for the required period. Records pertinent to the grant program will be made available to County representatives, or representatives of the Comptroller General of the U.S. for the purpose of making audit, examination, excerpts, and transcripts.
 - 3. Accounting records are supported by source documentation.
 - 4. Project Sponsors must ensure that the time elapsing between the transfer of funds to its depository and its disbursement of such funds does not exceed the three-day limit.
 - 5. Project Sponsors must respond in a timely and acceptable manner to the Bexar County Infrastructure Service Department in resolving audit findings and recommendations. Bexar County CDBG & HOME Division is the department responsible for responding directly to HUD in resolution of audit findings.
 - 6. Project Sponsors shall report to the Bexar County CDBG & HOME Division all gross income earned by the grant-supported activities (program income) and shall assure that expenditure of such income is done in accordance with CDBG/HOME regulations. Project Sponsors shall record the receipt and expenditures of revenues related to the program as part of the grant program transactions.
 - 7. For purchases or contracts involving over \$25,000, the Project Sponsor shall ensure that bids or

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proposals are solicited through public advertising, and that all such bids received are opened in a public meeting. Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Procurement must meet State requirements.

8. The Project Sponsor shall ensure that bid guarantees, performance bonds and payment bonds are submitted by contractors and/or subcontractors as required for contracts and/or subcontracts.
9. Project Sponsors should make positive efforts towards utilization of small business, women and minority-owned business sources of supplies and services (see section on SWMBE Policy).
10. Project Sponsors shall not utilize the "cost-plus-a-percentage-of-cost" method of contracting.
11. Project Sponsor officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors/subcontractors, and potential contractors and subcontractors or give the appearance of so doing.
12. Project Sponsors shall include provisions for the following in all contracts and subcontracts.
 - a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
 - b. All contracts shall contain suitable provisions for termination by the Project Sponsor, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
 - c. In all contracts for construction or facility improvement, awarded Project Sponsors shall observe all bonding requirements.
 - d. All construction contracts awarded by Project Sponsors and their contractors or subcontractors having a value of more than \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in DOL Regulations (41 CFR, Part 60).
 - e. All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-kickback" Act (18 U.S.C. 874) as supplemented in DOL Regulations (29 CFR, Part 3). The Project Sponsor shall report all suspected or reported violations to the Bexar County CDBG & HOME Division.
 - f. When required by the federal grant program legislation, all construction contracts awarded by Project Sponsors and contractors in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by DOL Regulations (29 CFR, Part 5). The Project Sponsor shall place a copy of the current prevailing wage determination issued by the DOL in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Project Sponsor shall report all suspected or reported violations to the Bexar County CDBG & HOME Division who will then report to the HUD Area Office.
 - g. Where applicable, all contracts awarded by Project Sponsors in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections

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service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

2. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with applicable regulations.
- G. Real Property. Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government.
1. Real property means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
 2. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:
 - a. Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.
 - b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.
 - c. When the real property is no longer needed as provided in a. and b. above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:
 - (1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.
 - (2) The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
 - (3) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.
 - (4) The rules in this section apply to real property under the recipient's control that received more than \$25,000 of CDBG assistance.
 - (a) They apply until 5 years after grant closeout.
 - (b) They provide that a grantee may not change the use of the property from that for which the acquisition or improvement was made without citizen participation and unless either:

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- i) the new use meets one of the three national objectives; or
 - ii) the grantee's CDBG program is reimbursed in the amount of the fair market value of the property (less any portion of the fair market value attributable to non-CDBG expenditures). After the reimbursement, the property is no longer subject to any CDBG requirements.
- (c) If the change of use occurs after grant closeout, the rules on program income received after close-out apply to the use of the funds reimbursed.
- (d) The rules on the use of real property are designed to ensure that CDBG funds serve their intended purposes.

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H. Attachment 1-1 Federal Requirements Checklist*

Project Title _____ Project Number _____
Notice of Contract Award to Bexar County CDBG & HOME Division

Executive Order 11246 (as amended):

- _____ (1) Equal Employment Opportunity Clauses in contracts and subcontracts greater than or equal to \$10,000
- _____ (2) "Certification of Bidder Regarding Equal Employment Opportunity" (Form HUD-950.1)
- _____ (3) "Approval of Subcontractors" (Form HUD-4242)
- _____ (4) Standard Form 100 (SF-100) (contracts greater than or equal to \$10,000)
- _____ (5) "Certification of Proposed Subcontractor Regarding Equal Employment Opportunity" (Form HUD-950.2)
- _____ (6) Equal Employment Opportunity Quarterly Report: Q1 Q2 Q3 Q4
- _____ (7) Notification of HUD of Pre-Bid Conference
- _____ (8) Place Equal Employment Opportunity Posters on job site(s), etc. (in conspicuous places) (both federal and city)

Section 3:

- _____ (1) Contractor Affirmative Action Plan (contracts greater than or equal to \$10,000)
- _____ (2) Subcontractor(s) Affirmative Action Plan (contracts greater than or equal to \$10,000)
- _____ (3) Preliminary Statement of Work Force Needs
- _____ (4) Section 3 clause in all contracts and subcontracts

Federal Labor Regulations:

- _____ (1) Inclusion of wage determination in contracts/subcontracts
- _____ (2) Notification to DIS of bid opening date, time, location and agenda
- _____ (3) Federal Labor clauses in applicable contracts/subcontracts
- _____ (4) Contractor certification regarding labor standards and prevailing wage requirements (Form HUD-1421)
- _____ (5) Subcontractor's Certification Regarding Labor Standards and Prevailing Wage Requirements (Form HUD-1422)
- _____ (6) Notification to Bexar County CDBG & HOME Division and HUD of Pre-Construction Conference time and location
- _____ (7) Notification to Bexar County CDBG & HOME Division and HUD of "Start of Construction"
- _____ (8) Post wage determination and wage rate notice in area accessible to employees
- _____ (9) Maintenance of Labor Standards Enforcement File to include:
 - _____ (a) Employee interview (Form HUD-11)
 - _____ (b) Applicable wage determination
 - _____ (c) Pre-construction conference report
 - _____ (d) Correspondence related to project administration
- _____ (10) Appropriate information on apprentices and/or trainees used in the project must be on file
- _____ (11) Quarterly report on construction contract status: Q1 Q2 Q3 Q4
- _____ (12) Weekly payroll submission and compliance statements
- _____ (13) Final wage compliance report

OMB Circular A-102:

- _____ (1) Notification to Bexar County CDBG & HOME Division of planned budget revisions
- _____ (2) Notification to Bexar County CDBG & HOME Division of equipment needing County identification number
- _____ (3) Obtained following from contractors/subcontractors:
 - _____ (a) Bid guarantees
 - _____ (b) Performance bonds
 - _____ (c) Payment bonds
- _____ (4) Obtain bids for purchases and contracts over \$10,000; and
- _____ (5) Open such bids in a public meeting
- _____ (6) Report to DIS all program income and expenditures
- _____ (7) Resolve all audit findings in timely manner
- _____ (8) Adequate recordkeeping and accounting procedures

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Acquisition and Relocation:

- _____ (1) Obtain HUD concurrence before making relocation payments in which the claim is in excess of \$25,000
- _____ (2) Relocation assistance advisory program
- _____ (3) Notice of land acquisition procedures
- _____ (4) List of condemnation proceedings
- _____ (5) List of acquired parcels
- _____ (6) Case files on acquired property

Other regulations:

- _____ (1) Insert flood disaster, water pollution, noise control, lead based paint, physically handicapped and historic preservation clauses in contracts as applicable.
- _____ (2) Obtain flood insurance if required

*Indicate date each step listed was completed

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II. Section Two: Equal Opportunity

- A. Executive Order 11246, as amended by Executive Order 11375. The emphasis of Executive Order 11246 is on non-discrimination and equal opportunity in employment by government contractors and subcontractors. The special provisions of Section 202 of the Order need to be inserted in any contract related to the use of federal funds and are incorporated herein below. Section 205 provides for the appointment of compliance officers by anyone contracting with the Project Sponsor for implementation of the federal project. Executive Order 11246 also provides for sanctions and penalties which can be imposed for non-compliance with its requirements. Amendment 11375 prohibits discrimination on the basis of sex. Following are the special provisions of Section 202 of the Order:
1. During the performance of this contract, this contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, handicap or political belief or affiliation. The contractor will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, national origin, religion, sex, age, handicap or political belief or affiliation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoffs, or terminations, rates of pay or other forms of compensation and selection for training, including apprenticeship.
 - b. The contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the Bexar County CDBG & HOME Division setting forth the provisions of this non-discrimination clause.
 - c. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - d. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Bexar County CDBG & HOME Division advising the labor union or workers' representative of the contractor's commitment under Section 202 of Executive Order 11246, as amended, and shall post copies of the notice on conspicuous places available to employees and applicants for employment.
 - e. The contractor will comply with all provisions of Executive Order 11246 as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
 - f. The contractor will furnish all information and reports required by Executive Order 11246 as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Bexar County CDBG & HOME Division and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations and orders.
 - g. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed (and remedies involved), as provided in Executive Order 11246 as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
 - h. Exemptions to Above Equal Opportunity Clause (41) CFR Chapter 50:

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- (1) Contracts and subcontracts not exceeding \$10,000 (other than government bills of lading) are exempt. The amount of the contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.
 - (2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.
 - (3) Contracts and subcontracts not exceeding \$100,000 for standard commercial supplies or raw materials are exempt.
- i. The contractor will include the provisions of Paragraphs "a." through "i." in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Bexar County CDBG & HOME Division may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Bexar County CDBG & HOME Division, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
2. Anyone contracting with the County for federally-funded projects must insert the above clauses ("a." through "i.") in all applicable subcontracts.
 3. The project sponsor will ensure that the Form 950.1, Certification of Bidder Regarding Equal Opportunity (Attachment 2-1), is completed and submitted by bidders as an initial part of the bid on the federally-funded project. No contract shall be awarded to a bidder unless he has filed all compliance reports due. The HUD Form 950.2, Certification of Proposed Subcontractor Regarding Equal Opportunity (Attachment 2-2) must also be completed and submitted by a proposed subcontractor.
 4. SMBE Forms 100 and 101 (Attachments 2-3 and 2-4) regarding subcontractors must be completed by the contractor and submitted to the Bexar County CDBG & HOME Division. If there is a change of subcontractors, SMBE Form 102 (Attachment 2-5) must be submitted to the Bexar County CDBG & HOME Division. Approval of subcontractors must be obtained from HUD. HUD Form 4242 (Attachment 2-6) must be filed at the Bexar County CDBG & HOME Division prior to the project's commencement.
 5. The contractor will submit a Quarterly Report (Attachment 2-7) to the Bexar County CDBG & HOME Division three months after the start of work on the contract and every three months thereafter. Such report shall reflect, among other information, data on minority applicant flow, new hires, termination data, and reasons for terminations.
 6. Show Cause Procedure- Should HUD determine a contractor to be in non-compliance with the equal opportunity requirements, procedures to "show cause" why funds should not be withheld will need to be reported, with a copy of the report going to the Bexar County CDBG & HOME Division.
- B. Section 3 of the Housing and Urban Development Act of 1968, as amended. Section 3 of the Housing and Urban Development Act of 1968, as amended, requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

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1. The Issuing Office shall include the Section 3 clause below (24 CFR 135.20) in all contracts funded in part or in whole with federal funds from HUD.
 - a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing & Urban Development, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 lu. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.
 - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of applications for employment or training.
 - d. The contractor will include this Section 3 clause (see Attachment 2-8) in every subcontract for work in connection with the project and will, at the direction of the Bexar County CDBG & HOME Division, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.
2. The contractors and subcontractors for \$10,000 or more shall submit a Section 3 Affirmative Action Plan (AAP) which follows the attached format (Attachment 2-9) to the Bexar County CDBG & HOME Division.
3. Where the project sponsor sells, leases, transfers, or otherwise conveys land upon which work, in connection with a Section 3 covered project, is to be performed, each contract or subcontract for work on such land shall include a clause requiring the purchaser, lessee, or redeveloper to adhere to the Section 3 regulations.
4. The contractor shall determine the maximum number of trainees for each construction and non-construction occupation used in a Section 3 covered area and submit that determination to Bexar County CDBG & HOME Division as part of the Section 3 AAP.
5. The contractor shall make a good faith effort to fill all training positions with lower income residents

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residing in the Section 3 covered area and that similar effort is made by contractors and sub-contractors.

6. Project Sponsors shall ensure contractors and subcontractors with contracts of \$10,000 and over develop and submit a written Section 3 Affirmative Action Plan to the Bexar County CDBG & HOME Division for review (sample Section 3 plan and forms are in Attachment 2-9). Within seven days of receipt of the plan, the Bexar County CDBG & HOME Division will inform the contractor, in writing, of the plan's approval or disapproval. If disapproved, the contractor must resubmit an acceptable Section 3 plan within 5 working days.
 7. Bexar County CDBG & HOME Division shall assure establishment and maintenance of all records related to the employment and training of women and minorities in a Section 3 covered area, in the Section 3 AAP.
 8. The Project Sponsor must forward to the Bexar County CDBG & HOME Division all preconstruction and bid negotiating reports for review.
- C. Executive Order 11625. Executive Order 11625 prescribes that all Federal departments and agencies develop and coordinate a National Program for Minority Business Enterprise. This Executive Order is designed to outline Federal policy to provide full participation in our free enterprise system by Minority Business Enterprises and was adopted on October 13, 1971. Pursuant to the instructions of this Executive Order and the enforcement by various Federal agencies of its requirements, Bexar County has developed and implemented a policy to increase the utilization of Minority Business Enterprises in its construction, professional services, and purchasing contracts. This program is outlined in Item G of this Manual.
- D. Bexar County Small and/or Minority Business Enterprise (SMBE) Policy
1. Policy. It is the policy of Bexar County, Texas to assist all Small, Minority, and Handicapped business entities in securing contracts issued by the Bexar County Purchasing Department and which are paid for through public funds as budgeted by Commissioners Court. Every effort shall be made to comply with the Small Business Act of 1975 as outlined in the Tex. Rev. Civ. Stat. Ann. Article 5190.3 (Vernon Supp. 1986) and Executive Orders MW-6, MW-7, and MW-8 dated May 19, 1983. There will be no preferential Bidders list and no set-asides will be made which will result in awards to any bidder over another except through fair and equitable competitive practices.
 2. County Purchasing Agent. The Bexar County Purchasing Agent shall be designated the responsibility for implementation of procedures, goals, and policies regarding the SMBE policy in Bexar County. It will be the Purchasing Agent's responsibility to issue appropriate instructions, provide adequate definitions and guidelines, and identify all bidders qualifying as SMBE concerns. The Purchasing Agent shall establish realistic goals, participate in seminars, workshops or conferences aimed at providing information and instructions to further SMBE awards of Bexar County contracts, and maintain data and statistics which measure SMBE participation.
 3. Qualified Business Concerns. Sources qualifying as SMBE potential contractors shall be those as defined in the Small Business Act of 1975 and outlined in the instructions for the Bexar County Bidder's Mailing List Application.
 4. Federal Funds and Grants. Bexar County shall comply with all administrative, legal, and contractual requirements set forth by any Federal Agency which funds, or partially funds, any contract issued by the Bexar County Purchasing Department, provided appropriate limitations and guidelines are made known to the Purchasing Department. All contracts issued shall contain appropriate contract provisions to insure compliance by Contractors and Subcontractors regarding bonds, insurance, wage scales, equal employment opportunities, trade practices, payments, and other federal programs outlined by Executive Orders 11246 and 11375.
 5. In the event of the Contractor's failure or refusal to comply with this SMBE clause, either during the

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bidding process or at any time during the term of this contract, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be debarred from further contracts with Bexar County.

- E. Citizen Participation. The citizen participation segment of the Housing and Community Development process should provide citizens with adequate information regarding the amount of funds available for community development and housing activities, the range and scope of activities eligible, as well as other important requirements as specified in the Bexar County Citizen Participation Plan.

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F. Attachment 2-1 Certification of Bidder Regarding Equal Employment Opportunity

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY	
INSTRUCTIONS	
<p>This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their subcontractors, shall state as an initial part of the bid or negotiations of the contractor whether it has participated in any previous contract or subcontract subject to the equal employment opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.</p>	
CERTIFICATION BY BIDDER	
NAME AND ADDRESS OF BIDDER (<i>INCLUDE ZIP CODE</i>)	
<p>1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Compliance reports were required to be filed in connection with such contract or subcontract.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Required</p>	
<p>4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
NAME AND TITLE OF SIGNER (<i>PLEASE TYPE</i>)	
SIGNATURE	DATE

Replaces Form HUD-4238.CD-1, which is obsolete

Form HUD-950.1

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G. Attachment 2-2 Certification By Proposed Subcontractor Regarding Equal Employment Opportunity

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY	
NAME OF PRIME CONTRACTOR	PROJECT NUMBER
INSTRUCTIONS	
<p>This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their subcontractors, shall state as an initial part of the bid or negotiations of the contractor whether it has participated in any previous contract or subcontract subject to the equal employment opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the subcontractor has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the owner approves the subcontract or permits work to begin under the subcontract.</p>	
SUBCONTRACTOR'S CERTIFICATION	
NAME AND ADDRESS OF SUBCONTRACTOR (<i>INCLUDE ZIP CODE</i>)	
1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Compliance reports were required to be filed in connection with such contract or subcontract. <input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Required	
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME AND TITLE OF SIGNER (<i>PLEASE TYPE</i>)	
SIGNATURE	DATE

Replaces Form HUD-4238.CD-2, which is obsolete

Form HUD-950.2

FEDERAL COMPLIANCE MANUAL

H. Attachment 2-3 Certification By Prime Contractor or Subcontractor

CERTIFICATION BY PRIME CONTRACTOR OR SUBCONTRACTOR

This Certification is required pursuant to the **Small and/or Minority Business Enterprise Program** of Bexar County.

Please check one: Prime Contractor Subcontractor
 Project Name: _____ Project Location: _____
 Contract Amount: _____ Firm's Name: _____
 Address & Zip Code: _____

According to the Definitions on the Following Pages:

1. Firm is (Please check one):
 a. sole proprietorship c. corporation b. partnership d. joint venture
 If joint venture includes a minority business enterprise, indicate the extent to which minority member will participate: _____
2. The ethnic or racial ownership of the firm (51% or more) is:
 a. Whiteb. Hispanic c. Black
 d. American Indian/Alaskan Nativee. Asian or Pacific Islander
 f. Two or more different minority groups g. Unknown
3. Firm is a small business enterprise: Yes No
4. Firm is a female-owned business enterprise (51% or more): Yes No
5. Firm is a handicapped-owned business enterprise (51% or more): Yes No
6. If prime contractor, list proposed subcontractors participating in the project under this contract on Form No. SMBE 101 if applicable. Prime Contractors must submit Certification Form No. SMBE 100 for each subcontractor.
7. Please list solicitations to minority contractors for bids on project. If none, please explain (exclude successful bidders listed on Form No. SMBE 101 attached)

Name/Address	Trade	Type of Firm	Minority Group	Dollar Amount

CERTIFICATION AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I understand and agree that this certification is a part of my contract with Bexar County and shall be attached thereto and become a part thereof.

Name and Title of Authorized Signer: _____

Signature: _____ Date: _____

The County is currently compiling a directory of small, minority, female and handicapped-owned businesses. May we publish information provided on this form in the directory? Yes No

PLEASE NOTE: The County realizes that the categories on this form will not describe all possible types of business organizations. Should you find that categories on this form do not properly describe your business, please call the Bexar County Department of Housing and Human Services at 270-6780 for help in completing this certification.

Form Number SMBE 100

FEDERAL COMPLIANCE MANUAL

I. Definitions

1. **Prime Contractors.** Any person, firm, partnership, corporation, association or joint venture as herein provided which has been awarded a County contract.
2. **Subcontractor.** Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing under contract with a prime contractor on a County contract.
3. **Minority Business Enterprise.** Means a business enterprise that is owned and controlled by one or more minority person(s). Minority persons include Blacks, Mexican-Americans and other persons of Hispanic origin, American Indians, Alaskan Natives, and Asians or Pacific Islanders. Minority person(s) shall collectively own, operate, and share in payments from such an enterprise in the manner hereinafter set forth:
 - a. For a sole proprietorship to be deemed a minority business enterprise, it must be owned by a minority person.
 - b. For an enterprise doing business as a partnership, it is necessary that at least 51% of its assets or interests in the partnership property be owned by one or more minority persons.
 - c. For an enterprise doing business as a corporation, it is necessary that at least 51% of its assets or interests in the corporate shares be owned by one or more minority persons.
 - d. For a business enterprise to be controlled by one or more minority persons, primary power, direct or indirect, must rest with minority persons.
 - e. Minority partners, proprietor or stockholders, of the enterprise, as the case may be, shall be entitled to receive 51.0% or more of the total profits, bonuses, dividends, interest payments, commissions, consulting fees, rents, procurements, and subcontract payments, and any other monetary distribution paid by the business enterprise.
4. **Female Owned Business Enterprise.** Means a sole proprietorship that is owned and controlled by a woman, a partnership at least 51% of whose assets or partnership interests are owned by one or more women, or a corporation at least 51% of whose assets or interests in the corporate shares are owned by one or more women.
5. **Handicapped Owned Business Enterprise.** Means a sole proprietorship that is owned and controlled by a handicapped individual, a partnership at least 51% of whose assets or partnership interests are owned by one or more handicapped individuals, or a corporation at least 51% of whose assets or interests in the corporate shares are owned by one or more handicapped individuals. A handicapped individual is a person with a physical or mental condition which substantially limits one or more major life activities.
6. **Joint Venture.** A joint venture means an association of two or more persons, partnerships, corporations, or any combination thereof, founded to carry on a single business activity which is limited in scope and direction. The degree to which a joint venture may satisfy the stated MBE goal cannot exceed the proportionate interest of the MBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture which is to perform 50.0% of the contract work itself, and in which a minority joint venture partner has a 50.0% interest, shall be deemed equivalent to having minority participation in 25.0% of the work. Minority members of the joint venture must have either financial, managerial, or technical skills in the work to be performed by the joint venture.
7. **Small Business Enterprise.** Means a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts and is designated a small business as provided by the Small Business Assistance Act of 1975 (64th Texas Legislature), Article 5190.3.

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J. Attachment 2-4 Certified List of Subcontractors

CERTIFIED LIST OF SUBCONTRACTORS

The bidder, _____, as part of the procedure for the submission of bids on a project known as: _____ submits the following list of subcontractors to be used in the performance of work to be done on said project.

Name/Address	Trade	Minority Group	Dollar Amount

All subcontractors must submit a Certification Form No. _____ through the Prime Contractor. It is understood and agreed that, if awarded a contract by Bexar County, the Contractor will not make additions, deletions, or substitutions to this certified list without the consent of the Bexar County CDBG & HOME Division.

CERTIFICATION AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that, if awarded the contract, this certification shall be attached thereto and become a part thereof.

Name and Title of Signer: _____

Signature: _____

Date: _____

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K. Attachment 2-5 Request For Approval Of Change To Original Certified List of Subcontractors

REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL CERTIFIED LIST OF SUBCONTRACTORS

The Contractor, _____, performing work on a project known as _____, requests approval of the following addition(s) and/or deletion(s) on the Certified List of Subcontractors Form No. _____, as originally submitted as part of the bid on the above named project:

Check One for Each Transaction		Name	<u>CHANGE</u> Trade	Minority Group	Dollar Amount
Add	Delete				
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

JUSTIFICATION

CERTIFICATION AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that, if awarded the contract, this certification shall be attached thereto and become a part thereof.

Name and Title of Signer: _____

Signature: _____ Date: _____

Approved: _____
 Executive Director
 CDBG & HOME Division

Approved: _____
 CDBG Program Manager

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- N. Attachment 2-8 Section 3 Compliance in the Provision of Training, Employment and Business Opportunities
1. During the performance of this contract, the contractor agrees to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 170u), as amended, the HUD regulations issued pursuant thereto at 24 CFR Part 135, and any applicable rules and orders of HUD issued thereunder.
 2. The "Section 3 clause" set forth in 24 CFR 135.20(b) shall form part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents."
 3. Contractors shall incorporate the "Section 3 clause" shown below and the foregoing requirements in all subcontracts.
 - a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing & Urban Development, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 lu. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the areas of the project.
 - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of applicants for employment or training.
 - d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, it's contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

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- O. Attachment 2-9 Section 3 Plan For Employment Opportunities For Businesses And Lower Income Persons In Connection With Assisted Projects

SECTION 3 PLAN FOR EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS SUBMITTED BY

(Name of Company)

OF BEXAR COUNTY, TEXAS FOR THE

(Name of Project)

1. For the purpose of this plan, the Section 3 geographic area is determined to be the boundaries of the County of Bexar.
2. The _____ (hereinafter referred to as the "Company") will include the Section 3 clause (Title 24, Part 135.20) in all subcontracts executed in connection with this project subsequent to the approval of this Plan by the Department of Housing and Urban Development.
3. The company will require all subcontractors to provide, prior to the signing of the subcontract, a preliminary statement of work force needs where known and shall advise the subcontractor of the requirements of Title 24, Part 135 as part of the contract specifications.
4. The company will utilize lower income project area residents as residents to the greatest extent feasible in accordance with Part 135.40 and 135.45.
5. The company will make a good faith effort to comply with the intent of Part 135. That effort will include listing vacant positions with the Texas Employment Commission, as well as advertising through the media and contacting local manpower projects. The company will also maintain adequate records demonstrating its good faith effort.
6. The company will comply with the regulations cited below:
 - a. Any applicant, recipient, contractor or subcontractor which fills vacant employment positions in its organization immediately prior to undertaking work pursuant to Section 3 covered contract shall set forth evidence acceptable to the Secretary that its actions were not an attempt to circumvent these regulations [Paragraph 135.55(b)].
 - b. When lower income resident workers apply from any source, the recipient contractor, or subcontractor, shall determine the qualifications of such persons and shall employ such persons if their qualifications are satisfactory and the contractor has openings. If the recipient, contractor or subcontractor is unable to employ the workers, such persons shall be listed for the first available opening [Paragraph 135.559(c)].
7. This company will assign a specific official to coordinate this effort and insure compliance.
8. This company accepts responsibility for the effectiveness or failure of its Equal Opportunity practices, including the prompt submittal of Quarterly Reports to the Bexar County CDBG & HOME Division, 233 N. Pecos, Suite 420, San Antonio, Texas 78207.
9. This company will keep this affirmative action plan on file at all work sites for review by employees as well as officials of the various federal agencies and Bexar County.

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- 10. The company will establish a grievance procedure in accordance with Part 135 and will post form HUD-902 and the "Equal Opportunity is the Law" poster (OFCCP-1420) at its office and work sites involved in this project.
- 11. This company will conduct special meetings with executive, management and supervisory personnel as well as subcontractors to explain the intent of these policies and the individual responsibility for effective implementation.
- 12. The company anticipates subcontracts in the approximate amounts indicated on the attached list, will seek subcontractors from the designated area, and accepts the responsibility of requiring that the subcontractors on this project comply with the Part 135 regulations, including the development of a Section 3 Plan, employing low income area residents, submission of quarterly reports to the Bexar County CDBG & HOME Division and the Equal Opportunity Division of the Department of Housing and Urban Development, and establishment of a grievance procedure.
- 13. The company presently employs _____ persons listed as follows:

Job Titles	Sex	Ethnicity

- 14. The company anticipates that it will employ an additional _____ persons in the following jobs as a result of this contract.

Job Titles

In filling these vacancies, the company will take affirmative action as outlined above.

Name and Title of Signer: _____

Signature: _____

Date: _____

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P. Attachment 2-9A Anticipated And Actual Subcontracts

Project Number: _____ Sponsor: _____

ANTICIPATED AND ACTUAL SUBCONTRACTS

The following list is intended to provide information on anticipated subcontracts and to provide a record of actual subcontracts. The final record will be provided to HUD Equal Opportunity Division for their use as desired and to reflect affirmative action compliance by this company.

COMPLETE FOR SUBMISSION WITH BID			THIS PORTION IS FOR RECORD KEEPING PURPOSES AFTER RECEIVING CONTRACT				
Craft/Specialty	Approximate		Subcontractor	Project Area Business		Minority Owned Business	
	\$ Amount	Date ¹	Name and Address	Yes	No	Yes	No
Total \$							

Goals for Subcontracts:

\$ _____ Total Dollars to Area Businesses²

\$ _____ Total Dollars to Minority/Women Businesses³

Codes: B - Black H - Hispanic W - White O - Other F - Female M - Male

- 1 - Approximate start and ending date of contract.
- 2 - Set Dollar amount goals for awarding of contracts to small or disadvantaged area business.
- 3 - Also set Dollar amount goals for awarding of contracts to minority and women owned business.

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Q. Attachment 2-9B Sample Letter For Recruitment Sources

SAMPLE LETTER FOR RECRUITMENT SOURCES

Gentlemen:

(Contractor or subcontractor) is presently participating in the construction of a project which is funded by the Federal Government.

To assure compliance under various laws, we are committed to take affirmative action to recruit lower-income workers from the defined area of this project. We are also recruiting minorities and women. The area of recruitment is not limited to the project area in this case. We are an Equal Employment Opportunity employer (male and female). The designated area of this project is_____.

The crafts (by classification) shown below reflect our primary needs for manpower:

Craft	Journeyman	Apprentice

The hiring office is located at:

Your assistance in our recruiting efforts will be appreciated.

Sincerely,

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S. Attachment 2-9D Company Location And Ownership

Project Number: _____ Sponsor: _____
 Contract Number: _____ Company: _____

Date:

Our Company (is) or (is not) located in and (is) or (is not) owned by residents of the Project Area.

The positions and employees reflected below represent the present employment of the Company. As vacancies occur or new positions are established, we will attempt to maintain at least ____%* of the workforce from the Project Area (Use figures arrived at on Attachment 2-9C).

Position	Name/Address	Project Area Resident		Sex/Race Code
		Yes	No	

Signed:

Title:

Codes: B - Black H - Hispanic W - White O - Other F - Female M - Male

Include all employees related to this job including administrative and clerical staff.

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III. Section Three: Wage and Labor Requirements

A. Federal Labor Standards Provisions

1. Bexar County shall include provisions relating to the following acts in each applicable contract.
 - a. The Davis-Bacon Act (40 U.S.C. 2769-5) is applicable to all construction contracts awarded by grantees and subgrantees to contractors in excess of \$2,000 and provides that all laborers and mechanics employed by the contractor or subcontractors in the performance of the construction work, financed in whole or in part with grants received, will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. These wage determination rates are to be included in the project contract. Violations may result in suspension of project payment and/or contract termination suspension, or debarment in addition to unpaid wages to affected employee. This section shall apply to the rehabilitation of residential property only if such property is designated for residential use for eight or more families.
 - b. The Copeland Act ("Anti-Kickback Act"--48 STAT. 948.40 U.S.C. 276(c) is applicable to all contracts awarded by grantees and subgrantees to contractors in excess of \$2,000 for construction or repair and provides that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebates on any account except "permissible" salary deductions, the full amount due at the time of payment computed at wage rates not less than those contained in the wage determination issued by the Secretary of Labor. Appropriate weekly compliance statements and payrolls are required to be submitted each week from contractors and subcontractors. Violations may be grounds for termination of Contract.
 - c. The Contract Work Hours & Safety Standards Act (40 U.S.C. 327-333) is applicable to all contracts awarded by grantees and subgrantees to contractors in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts, where federal funds are involved, and provides that no contractor or subcontractor shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a ratio of not less than 1½ times his basic rate of pay for all hours worked in excess of 40 hours in such work week. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as to the United States for a sum of liquidated damages. Violations may also be grounds for termination of contract.
2. Project Sponsor Responsibilities in Addition to the Above:
 - a. Should an individual project determination be requested, HUD Form SF-308 (Attachment 3-1) may be used by the project sponsor. Area wage determinations and individual project (wage) determinations are issued by the Department of Labor. The applicable wage determination should be incorporated into the bid package supplied to prospective bidders on a project. Wage rates contained in the determination shall be the minimum wage rates to be paid under project contracts and subcontracts.
 - b. Bexar County CDBG & HOME Division shall ensure that the applicable wage decision and any additional classifications shall be posted at the site of the work in a prominent place readily accessible to workmen for the duration of the project.
 - c. Bexar County CDBG & HOME Division must require HUD Form 1421, Contractors Certification Concerning Labor Standards and Prevailing Wage Requirements (Attachment 3-2), or HUD Form 1422, Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements (Attachment 3-3), to be completed and submitted by each

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project contractor or subcontractor as appropriate. These will be kept on file in the Bexar County CDBG & HOME Division to be available for HUD review as needed.

- d. Prior to the start of construction, project sponsors must conduct a conference to advise contractors and subcontractors of their responsibilities and obligations regarding the labor standards provisions in the contract documents. Documentation on pertinent data discussed and attendance at the conference must be retained in the Bexar County CDBG & HOME Division in a Labor Standards Enforcement File for the project. It is necessary for HUD to be notified of each such conference. The following procedures shall be used:
 - (1) The project sponsor will provide written notice of a preconstruction conference to the Bexar County CDBG & HOME Division and HUD (San Antonio Office) no less than thirty and again at ten calendar days prior to the scheduled meeting.
 - (2) The notice will state the conference time, date, location, name of the project, and the name of the contractor to whom the bid is awarded.
 - (3) The project sponsor will inform the Bexar County CDBG & HOME Division and HUD (San Antonio Office) of any changes, problems, or delays no later than three days prior to the originally scheduled conference date.
 - (4) If any delays are encountered and rescheduling occurs, the Bexar County CDBG & HOME Division and HUD (San Antonio Office) will require three full days advance notice of the rescheduled pre-construction conference.
- e. The Bexar County CDBG & HOME Division will keep on file all material relevant to Labor Standards Enforcement on the project. Information to be in the file includes: 1) applicable wage determination; 2) minutes of pre-construction conference; and 3) payrolls and employee wage interviews, as well as copies of other correspondence, memos, etc., pertaining to the administration and enforcement of labor standards.
- f. Weekly payrolls of both contractors and subcontractors utilized on the project must be filed in the Labor Standards Enforcement File. The Bexar County CDBG & HOME Division must ensure that payrolls are completed and submitted for file no later than seven working days following completion of the work week.
- g. The Bexar County CDBG & HOME Division shall ensure that apprentices or trainees used on a project are individually registered under a bonafide apprenticeship program or are certified by the Bureau of Apprenticeship and Training or State Apprenticeship Agency. The allowable ratio of apprentices or trainees to journeymen in any craft classification must not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.
- h. Project employees will be interviewed (at random) by the Bexar County CDBG & HOME Division using HUD Form No. 11, Record of Employee interview (Attachment 3-4), to determine compliance with wage rates, apprentice to journeymen ratios, etc. Such interviews shall become a part of data maintained in the Labor Standards Enforcement File in the Bexar County CDBG & HOME Division. HUD and Federal EEO officials may also conduct employee interviews for each project.
- i. Project Sponsors must ensure, in accordance with the contract that the contractor/subcontractor agrees to comply with the following provisions as required by federal regulations. The clauses should be inserted in full in any contract/subcontract subject to the labor standards provisions, except those subject only to the Contract Work Hours Standard Act:

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- (1) Minimum Wages. All laborers and mechanics employed upon the work covered by this contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Bexar County CDBG & HOME Division for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated 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 Section 5.5. (a) (1) (iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (2) Underpayment of Wages or Salaries. In case of underpayment of wages by the contractor or by any subcontractor to laborers or mechanics employed by the contractor or subcontractor upon the work covered by this contract, the Bexar County CDBG & HOME Division, in addition to such other rights as may be afforded it under this contract shall withhold from the contractor, out of any payments due the contractor, so much thereof as the Bexar County CDBG & HOME Division may consider necessary to pay such laborers or mechanics the full amount of wages required by this contract. The amount so withheld may be disbursed by the Bexar County CDBG & HOME Division, for and on account of the contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs of any type of fringe benefit described in the applicable wage determination.
- (3) Payrolls and Basic Records. The contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Bexar County CDBG & HOME Division. The contractor shall submit weekly to the Bexar County CDBG & HOME Division one certified copy of all payrolls of the contractor and of the subcontractors, it being understood that the contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1 (b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5 (a) (1) (iv) of Title 29, Code of Federal Regulations, 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)

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- (2) (b) of the Davis-Bacon Act, the contractor or subcontractor 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. The contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Bexar County CDBG & HOME Division, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the contractor or of any subcontractor during working hours on the job.
- (4) Employment of Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his 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 a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.15, or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour division of the U.S. Department of Labor written evidence of the registration of his program in apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall not be less than the appropriate percentage of the journeyman's rate contained in the applicable rates determination.
- (5) Employment of Trainees. Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor Manpower Administration, Bureau of Apprentice and Training. The ratio of trainees to journeyman shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate and who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor is required to furnish a copy of the certification along with the payroll employee is first listed on. In event the Bureau of Apprenticeship and Training withdraws approval of a training program the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (6) Regulations Pursuant to So-Called "Anti-Kickback Act". The contractor shall comply with the applicable regulations (and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-

FEDERAL COMPLIANCE MANUAL

called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948:62 Stat. 862: Title U.S.C., Section 874: and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

- (7) Subcontracts. The contractor shall insert in any subcontracts the clauses set forth in paragraph k of this Section I and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made. The contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors, and to give the contractor the same power as regards terminating any subcontract that the Owner may exercise over the contractor under any provision of the contract documents.
 - (8) Contract Termination: Debarment. A breach of clause (1) through (7) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.
- j. Project Sponsors must ensure, in accordance with the contract, that the contractor/subcontractor agrees to comply with the following provisions in any contract subject to the Contract Work Hours and safety Standards Act:
- (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, including watchmen and guards, shall require or permit any laborer or mechanic in any work week in which he is employed on such work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of forty hours in such work week, as the case may be.
 - (2) Violations: Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in sub-paragraph (1) the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in subparagraph (1) in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1).
 - (3) Withholding and Unpaid Wages and Liquidated Damages. The Bexar County Department of Housing and Human Services shall withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractors, such sums as may administratively 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).
 - (4) Subcontracts. The contractor will insert in any subcontracts the Federal Labor Standards Provisions contained herein and such other clauses as the Department of

FEDERAL COMPLIANCE MANUAL

Housing and Urban Development may, by instructions require, and also a clause requiring the contractor to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

Project Sponsors shall incorporate the above clauses into every applicable contract/subcontract negotiated under this project.

- k. Project Sponsors shall ensure, in accordance with the contract, that no laborer or mechanic regularly employed in construction work for a Community Development Block Grant/HOME project is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety.
- l. Project Sponsors must require submission of a weekly statement regarding wages paid during the preceding weekly payroll period to each employee engaged on project work from all contractors/subcontractors with contracts of over \$2,000. Form WH 348, Statement of Compliance (Attachment 3-5), and Form WH 347, Payroll (for Contractor's Optional Use) (Attachment 3-6), or identical forms may be used.
- m. The Bexar County CDBG & HOME Division will provide HUD with written notice of project completion, and will ensure payroll records are preserved for a period of three years from the date of completion of the contract, and that they are available for inspection at all times.
- n. Project Sponsors must ensure no person employed in construction or completion repair of public work is induced, by any means, to give up any part of the compensation to which he or she is otherwise entitled.

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C. Attachment 3-2 Contractor's Certification Concerning Labor Standards And Prevailing Wage Requirements

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM CONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS		
To (<i>Appropriate Recipient</i>)	Date	
c/o	Project Number (<i>If any</i>)	
	Project Name	
1. The undersigned, having executed a contract with _____ for the construction of the above-identified project, acknowledges that:		
(a) The Labor Standards provisions are included in the aforesaid contract;		
(b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility;		
2. He certifies that:		
(a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).		
(b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.		
3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.		
4. He certifies that:		
(a) The legal name and the business address of the undersigned are:		
(b) The undersigned is:		
Proprietorship	(1) Single	(3) A Corporation Organized in the State of:
	(2) A Partnership	(4) Other Organization (<i>Describe</i>)
(c) The name, title and address of the owner, partners or officers of the undersigned are:		
NAME	TITLE	ADDRESS
Form HUD-1421		
(d) The names and addresses of all other persons both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest (<i>If none, so state</i>):		

FEDERAL COMPLIANCE MANUAL

NAME	ADDRESS	NATURE OF INTEREST

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial are *(If none, so state)*:

NAME	ADDRESS	TRADE CLASSIFICATION

By: _____ Date: _____
 Prime Contractor

Name and Title of Authorized Signer: _____

Signature: _____

WARNING

U.S. Criminal Code, Section 1010, Title 18 U.S.C., provides in part: "Whoever,....makes, passes, utters, or publishes any statement, knowing the same to be false....shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both"

FEDERAL COMPLIANCE MANUAL

D. Attachment 3-3 Subcontractor's Certification Concerning Labor Standards And Prevailing Wage Requirements

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM SUBCONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS		
To (<i>Appropriate Recipient</i>)	Date	
	Project Number (<i>If any</i>)	
c/o	Project Name	
1. The undersigned, having executed a contract with _____ for the <div style="text-align: center;"><i>(Contractor or Subcontractor)</i></div> in the amount of \$ _____ in the construction <div style="text-align: center;"><i>(Nature of Work)</i></div> of the above-identified project, acknowledges that:		
(a) The Labor Standards Provisions of The Contract for Construction are included in the aforesaid contract;		
(b) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (<i>29 CFR, Part 5</i>) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (<i>40 U.S.C. 276a-2(a)</i>).		
(c) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.		
2. He agrees to obtain and forward to the contractor, for transmittal to the recipient, within ten days after the execution of any lower subcontract, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements, executed by the lower tier subcontractor, in duplicate.		
(a) The workmen will report for duty on or about _____, 20 ____		
3. He certifies that:		
(a) The legal name and the business address of the undersigned are:		
(b) The undersigned is:		
Proprietorship	(1) Single	(3) A Corporation Organized in the State of:
	(2) A Partnership	(4) Other Organization (<i>Describe</i>)
(c) The name, title and address of the owner, partners or officers of the undersigned are:		
NAME	TITLE	ADDRESS

FEDERAL COMPLIANCE MANUAL

Form HUD-1422

(d) The names and addresses of all other persons both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest (*If none, so state*):

NAME	ADDRESS	NATURE OF INTEREST

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial are (*If none, so state*):

NAME	ADDRESS	TRADE CLASSIFICATION

By: _____ Date: _____
 Subcontractor

Name and Title of Authorized Signer: _____

Signature: _____

WARNING

U.S. Criminal Code, Section 1010, Title 18 U.S.C., provides in part: "Whoever.....makes, passes, utters, or publishes any statement, knowing the same to be false....shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both"

FEDERAL COMPLIANCE MANUAL

E. Attachment 3-4 Labor Standards (Employee Interview)

Labor Standards

OMB Approval No. 2501-0009 (Exp. 4-30-88)

Project Number	Contractor or Subcontractor (Employer)
Project Name	

1. Name of Employee

2. Home Address and Zip Code

3. Last Date You Worked on Project Before Today?	Number of Hours Worked on Project on that Date?
--	---

4. Your Hourly Pay Rate?

\$

5. Your Job Classification(s)		Yes	No
	Apprentice?		

6. Your Duties?

7. Tools or Equipment Used?

8. Paid at Least Time and One-Half for All Hours Worked in Excess of 40 In a Week? <i>(If overtime premium pay is not required, enter "inapplicable")</i>	Yes	No

9. Ever Threatened, Intimidated, or Coerced into Giving Up Any Part of Pay?		

10. Duties Observed by Interviewer

	Yes	No
Conform to Classification:		

11. Remarks *(Continue on reverse if necessary)*

12. Signature of Interviewer	Date of Interview
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Payroll Examination

13. Remarks *(Continue on reverse if necessary)*

12. Signature of Payroll Examiner	Date
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FEDERAL COMPLIANCE MANUAL

F. Attachment 3-5 Statement Of Compliance

U.S. Department of
Labor Wage and Hour
Division

Form Approved
Budget Bureau No. 44-R1093

STATEMENT OF COMPLIANCE

Date _____

I, _____, _____ do hereby state:
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on
(Contractor or subcontractor)
the _____; that during the payroll period commencing on the ____ day of _____,
(Building or work)
20____ and ending the ____ day of _____, 20____, 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
(Contractor or subcontractor)
from the full 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 CFR 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; U.S.C. 276c), and described below:

(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	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).

FEDERAL COMPLIANCE MANUAL

INSTRUCTIONS FOR PREPARATION OF STATEMENT OF COMPLIANCE

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions follow:

Contractors who pay all required fringe benefits. A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted Section 4(c).

Contractors who pay no fringe benefits. A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions. Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or (b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

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G. Attachment 3-6 Payroll Form

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Form Approved
Budget Bureau No. 44-R1093

Name of Contractor <input type="checkbox"/> or Subcontractor <input type="checkbox"/>					Address															
Payroll Number		For Week Ending			Project and Location					Project or Contract Number										
(1) Name, Address, and Social Security Number of Employee	(2) No. of Withholding Exemptions	(3) Work Classification	OT or ST	(4) Day and Date							(5) Total Hours	(6) Rate of Pay	(7) Gross Amount Earned	(8) Deductions					(9) Net Wages Paid for Week	
				Hours Worked Each Day										FICA	With- holding Tax			Other		Total Deductions
			O																	
			S																	
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Form WH-347 (1/68)

FEDERAL COMPLIANCE MANUAL

Date _____

I, _____,
(Name of signatory party) (Title)
do hereby state:

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

_____ on _____ the
(Contractor or subcontractor) (Building or work)
_____ ; that during the payroll period commencing on the

day of _____, 20____, and ending the ____ day of _____, 20____, 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

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 CFR 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; U.S.C. 276c), and described below:

(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	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).	

FEDERAL COMPLIANCE MANUAL

H. Instructions for Completing Payroll Form WH-347

1. General. The use of WH 347, payroll form, is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Part 3 and 5 (29 CFR Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

This form meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay not less than fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance on the rear of the payroll that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

2. Contractor or Subcontractor. Fill in your firm's name and check appropriate box.
3. Address. Fill in your firm's address.
4. Column 1 - Name, Address and Social Security number of Employee. The employee's full name must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless his address changes. Although not required by Regulations, Parts 3 and 5, space is available in the name and address section so that Social Security numbers may be listed.
5. Column 2 - Withholding Exemptions. This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.
6. Column 3 - Work Classifications. List classification descriptive of work actually performed by employees. Consult classifications and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown of hours so worked is maintained and shown on submitted payroll by use of separate line entries.
7. Column 4 - Hours Worked. On all contracts subject to the Contract Work Hours Standards Act enter as overtime hours all hours worked in excess of 8 hours per day and 40 hours a week.
8. Column 5 - Total. Self-explanatory.
9. Column 6 - Rate of Pay, including Fringe Benefits. In straight time box, list actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly compiling overtime. See "Fringe Benefits" below. In overtime box show overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See "Fringe Benefits" below. Payment of not less than time and one-half the basic of regular rate paid is required for overtime under the Contract Work Hours Standards Act of 1962. In addition to paying not less than he predetermined rate for the classification in which the employee works, the contractor shall pay to approved plans, funds, or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits to the wage decision made part of the contract. See "FRINGE BENEFITS" below.
10. Fringe Benefits
 - a. Contractors who pay all required fringe benefits. A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a contractor shall check

FEDERAL COMPLIANCE MANUAL

paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in Section 4(c).

- b. Contractors who pay no fringe benefits. A Contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).
- c. Use of Section 4(c), Exceptions. Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employee as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringe and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on Federal or Federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in columns 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computations of overtime rate.

- 11. Column 7 - Gross Amount Earned. Enter gross amount earned on this project. If part of the employees weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/120.00.
- 12. Column 8 - Deductions. Five columns are provided for showing deductions made. If more than five deductions should be involved, use first 4 columns, show the balance of deductions under "Other" column, show actual total under "Total Deductions" columns and in the attachment to the payroll describe the deductions contained in the "other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage, but indicate that deductions are based on his gross wages.
- 13. Column 9 - Net Wages Paid for Week. Self explanatory.
- 14. Totals. Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.
- 15. Statement Required by Regulations Parts 3 and 5. While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 U.S.C. 1001, namely, possible imprisonment for 5 years or \$10,000.00 fine or both. Accordingly, the party signing this required statement should have knowledge of the facts represented as true.
- 16. Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See paragraph entitled "FRINGE BENEFITS" above for instructions concerning filling out paragraph 4 of the statement.

IV. Section Four: Other Program Requirements

- A. Federal Water Pollution Control Act, as amended. Generally, these two acts require that federally-funded activities not adversely affect the quality of the surrounding air and water.
 - 1. Project Sponsors should insert the following clauses in HUD construction contracts:
 - a. Compliance with Air and Water Acts. "During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as

FEDERAL COMPLIANCE MANUAL

amended, 42 U.S.C. 1857 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended."

2. In addition to the foregoing requirements, Project Sponsors shall require by inserting a clause in the contract, non-exempt contractor and subcontractors to furnish the following:
 - a. A stipulation by the contractor and subcontractors that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
 - b. Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857C08) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
 - c. A stipulation that, as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA list of Violating Facilities.
 - d. Agreement by the contractor that he will include, or cause to be included, the criteria and requirements in Paragraph a through d of this Section in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.
 3. The Project Sponsor shall also evaluate the impact of the proposed project/activity on the quality of water and air.
- B. Flood Disaster Protection Act of 1973 (P.L. 93234). CDBG funds cannot be used for any activity located in an area designated as having special flood hazards, unless the locality is participating in the National Flood Insurance Program (Section 570.609).
1. Project Sponsors should determine if the location of a funded activity lies in flood hazard areas and evaluate the implication of locating a facility in this area.
 2. Project Sponsors should insert the following clauses in applicable construction contracts:
 - a. Flood Disaster Protection. "This agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93.234). No portion of the assistance provided under this agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 202(d) of said Act; and the use of any assistance provided under this agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this agreement shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigners to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under

FEDERAL COMPLIANCE MANUAL

Section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this agreement."

- C. Noise Assessment Guidelines - July 1979. It is the purpose of this departmental policy (HUD) to encourage the control of noise at its source in cooperation with other federal departments and agencies, to encourage land utilization patterns for housing and other municipal needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas, and to prohibit HUD support to new construction on sites having unacceptable noise exposures. This Circular thus provides policy to guide the exercise of discretion afforded in legislation on the various HUD programs. The Circular is based on authority provided in:
1. The Department of Housing and Urban Development Act of 1965 (PL 89-174).
 2. The National Environmental Policy Act of 1969 (PL 91-190).
 - a. Project Sponsors, with the help of the Bexar County CDBG & HOME Division, are responsible for evaluation of the environmental factors of a site on which HCD funded facility activities are to be located to investigate where excessive noise problems exist which may conflict with the use of the facility/activities.
 - b. If excessive noise problems do exist, Project Sponsors must assure that proper measures will be taken in the construction or rehabilitation.
 3. Project Sponsors must insert the following in all construction contracts assisted with Community Development Block Grant funds:
 - a. Noise Control Act of 1972. "The contractor agrees to comply with federal noise control regulations during the performance of this contract. This shall include, but not be limited to, compliance with the Noise Control Act of 1972 d(86 STAT. 1234. Public Law 92-574), and Noise Assessment Guidelines, Departmental Policy, Implementation, Responsibilities and Standards."
- D. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (Public Law 91-695) generally prohibits the use of lead-based paint for construction or rehabilitation of residential structures assisted by federal funds.
1. Project Sponsors must insert the following clauses in HCD funded construction/rehabilitation contracts of residential units:
 - a. Lead-Based Paint Hazards. "Construction or rehabilitation of residential structures is subject to HUD Lead-Based Paint regulations, 24 CFR, Part 25. The contractor and subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under subpart of B of said regulations. They will be responsible for the inspections and certifications required under Section 35.14(f) thereto."
 2. The Bexar County CDBG & HOME Division will conduct inspections and certifications as specified in the Act.
- E. Public Building Accessibility to Physically Handicapped (P.L. 90-480). This Act applies to any building or facility financed wholly or in part by a grant or a loan made by the federal government and may result in the employment or residence therein of physically handicapped persons. The Act requires that such building and facility be in compliance with standards for design construction or alteration issued by the federal government to ensure accessibility of physically handicapped persons. The Texas State Purchasing and General Services Commission reviews and approves all designs for conformance with State Architectural Barrier laws. The Administrator of General Services, in consultation with the Secretary of Health and Human Services, is authorized to prescribe such standards. Conformance with Texas law will assure conformance with PL 90-480.

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1. Where parks, playgrounds, and miscellaneous facilities are designed in-house, Project Sponsors should ensure they conform with standards specified in this Act.
 2. Compliance with and insertion of the following clause in all funded construction contracts are required:
 - a. Accessibility of Physically Handicapped Persons to Public Buildings Act of 1968. "The Contractor agrees to comply with the provisions of Public Law 90-480."
- F. Executive Order #115934 - Archeological and Historical Preservation Act of 1974 (P.L. 93-291). This federal legislation is aimed at the identification, preservation, restoration, and maintenance of historic or archeological buildings, sites, etc., through:
1. Adding of significant properties to the National Register;
 2. Providing grants-in-aid to the states and the National Trust for Historic Preservation;
 3. Requiring the evaluation of the impact of projects sponsored to be funded with federal funds on sites, buildings, etc., of historic or archeological significance.
 4. Project Sponsors shall insert the following provision in all construction contracts:
 - a. National Historic Preservation Act of 1966. "The contractor agrees to contribute to the preservation and enhancement of structures and objects of historical, architectural, or archeological significance when such items are found and/or unearthed during the course of project construction and to consult with the State Historic Preservation Officer for recovery of the items. (Reference: National Historic Preservation Act of 1966 [80 STAT. 915, 16 U.S.C. 470], Executive Order 11593 of May 31, 1971 and Archeological and Historic Preservation Act of 1974 [88 STAT. 174, 16 U.S.C. 469])."
 5. The Bexar County CDBG & HOME Division shall complete the Historic Preservation Section of the Environmental Review Record as required.
- G. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 STAT. 1894, 42 U.S.C. 4601). This Act provides that uniform, fair and equitable treatment be afforded persons displaced as a result of federally-assisted projects so that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Also encourage and expedite the acquisition of real property for a federally-assisted project by agreements with owners of such property to avoid litigation and relieve congestion in courts to assure consistent treatment for owners of real property to be so acquired and to promote public confidence in federal land acquisition.
1. Relocation Responsibilities. To insure compliance with the Act, Bexar County has adopted the following Displacement Policy:
 - a. The Uniform Relocation and Real Property Acquisition Policy Act of 1970 (Uniform Act), as amended in 1974, requires recipient cities and urban counties of Community Development Block Grant (CDBG) /HOME funds to provide "reasonable benefits" to persons permanently and involuntarily displaced by activities funded through programs of the U.S. Department of Housing and Urban Development (HUD).
 - b. Where one or more CDBG/HOME activities could result in "Displacement", as defined in Title 24 Code of Federal Regulations (CFR) §570.612(a), the County of Bexar has developed, adopted and will make public a statement of local policy indicating steps to be taken. These steps shall be consistent with other goals and objectives of the CDBG/HOME program in minimizing displacement of persons from homes and neighborhoods and to mitigate the adverse effects of any such displacement on low to

FEDERAL COMPLIANCE MANUAL

moderate income persons.

- (1) Displacement (§570.612). "Displacement" means the involuntary movement, except temporary relocation, of a household from a dwelling unit resulting from its acquisition, rehabilitation, or demolition when:
 - (a) funded in whole or in part with CDBG/HOME funds;
 - (b) funded with non-CDBG funds where acquisition, rehabilitation, or demolition is a prerequisite for an activity carried out with CDBG/HOME funds (e.g. acquisition of land with local funds for a neighborhood facility to be constructed with CDBG/HOME funds).
- (2) Displacement also means the involuntary movement, except temporary relocation, of a household from a dwelling unit necessitated by CDBG/HOME assisted code enforcement.

2. Reasonable benefits. Section 104(j) of the Act requires that benefits be provided to persons displaced by certain CDBG assisted activities for which the Uniform Act does not apply. This provision identifies these activities for which benefits are payable under Section 2104(j), the benefits required to be provided, and the circumstances under which persons will be entitled to receive such benefits.
 - a. Benefits must be provided for displacement resulting from the CDBG/HOME assisted acquisition of property, when it is acquired by any entity not defined as a "State agency" pursuant to Section 101(3) of the Uniform Act, or rehabilitation of property by any entity.
 - b. To be eligible to receive benefits under this provision, persons must be occupying the affected property on a tenant basis at the time of or immediately preceding the acquisition or rehabilitation (or as an owner in the case where property is acquired by a non-State agency under the power of eminent domain) and must be:
 - (1) Required to permanently vacate the structure they are occupying on such property; or
 - (2) In the case of a residential tenant in a structure being rehabilitated, unable to afford to occupy a unit in the structure following rehabilitation either because the rental cost would not be affordable or because they are required to vacate the structure temporarily but are not reimbursed for all reasonable additional out-of-pocket expenses occasioned by the temporary move.
 - c. Benefits required to be provided under this paragraph shall consist of the following:
 - (1) Payment of reasonable moving expenses;
 - (2) Provision of advisory services as needed to help in moving; and
 - (3) For a residential tenant, financial and/or advisory assistance sufficient, in the determination of the grantee, to enable the tenant to obtain decent, safe and sanitary housing at an affordable rental cost to the tenant. In providing advisory assistance to displaced persons to obtain such housing, grant recipient shall advise them of their individual rights under the Federal Fair Housing Law (Title VIII), and of replacement housing opportunities in such manner that, wherever feasible, the displaced have a choice between relocating within their own neighborhood and other neighborhoods consistent with the grant recipient's responsibility to affirmatively further fair housing.
 - d. For purposes of this Policy, the term "persons" includes individuals, families, non-profit organizations, businesses and farms.
 - e. For purposes of this Policy, rental cost shall be considered to be affordable if the rent (plus the high

FEDERAL COMPLIANCE MANUAL

cost of utilities when not included in the rental rate) does not exceed the greater of the rent plus utilities paid by the tenant prior to the acquisition or displacement activity or the amount of the total TENANT PAYMENT that would apply to the tenant under 24 CFR 813.107(a).

3. The County of Bexar, in its first entitlement year, and as the governing body of the Community Development Block Grant/HOME program, has developed a general policy to be in conformity with Section 902 of the Housing and Community Development Amendments of 1978 (Pub. L. 95-557). This public law provides that, in the administration of Federal housing and community development programs, consistent with other program objectives and goals, involuntary displacement of persons from neighborhoods should be minimized. Thus, the County agrees to minimize displacement of persons from their neighborhoods; and should displacement of said persons occur, the County shall provide "displacement benefits" to property owners and occupants displaced by the use of CDBG/HOME and/or any other program funded under Title 1 of the Housing and Community Development Act of 1974, as amended.

REQUIRED FEDERAL COMPLIANCE MANUAL DOCUMENTS

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FEDERAL COMPLIANCE MANUAL

Attachment	Contractor	Subcontractor
2-1 Certification of Bidder Regarding Equal Employment Opportunity (Form HUD 950.1)	X In bid documents	
2-2 Certification by Proposed Subcontractor Regarding Equal Employment Opportunity (Form HUD 950.2)		X
2-3 Certification by Prime Contractor or Subcontractor (Form SMBE 100)	X In bid documents	X
2-4 Certified List of Subcontractors (Form SMBE 101)	X In bid documents	
2-5 Request for Approval of Change to Original Certified List of Subcontractors (Form SMBE 102)	X	
2-6 Approval of Subcontractors (Form HUD 4242)	X	X
2-7 Quarterly Report	X	X
2-8 Section 3 Compliance in the Provision of Training, Employment and Business Opportunities	X	
2-9 Section 3 Plan for Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects	X All contracts over \$15,000	X All subcontracts over \$15,000
2-9A Anticipated and Actual Subcontractors	X All contracts over \$15,000	X All subcontracts over \$15,000
2-9B Sample Letter for Recruitment Sources	X All contracts over \$15,000	X All subcontracts over \$15,000
2-9C Affirmative Recruitment and Utilization of Lower Income Project Area Residents, Minorities and Women	X All contracts over \$15,000	X All subcontracts over \$15,000
2-9D Company Location and Ownership	X All contracts over \$15,000	X All subcontracts over \$15,000
3-2 Contractor's Certification Concerning Labor Standards & Prevailing Wage Requirements (Form HUD 1421)	X	
3-3 Subcontractor's Certification Concerning Labor Standards & Prevailing Wage Requirements (Form HUD 1422)		X
3-5 Statement of Compliance (Form WH 348)	X All contracts over \$2,000	X All subcontracts over \$2,000
3-6 Payroll (Form WH 347)	Optional	Optional

AUTHORIZATION FOR SIGNATURE OF PAYROLLS

FEDERAL COMPLIANCE MANUAL

Name of Company: _____

Project Name: _____

Project Location: _____

I _____ (contractor/employee) authorize _____ to sign the payrolls
for my employees who work on the _____ project.

Signature

Date

PAYROLL DEDUCTION AUTHORIZATION

FEDERAL COMPLIANCE MANUAL

This authorizes payroll deductions from my wages in the amount of \$_____ by my employer for the following items:

1. Loan
2. Fringe Benefits
3. Uniforms
4. Insurance (other than workers compensation)
5. Other (list item)

Mode of Payment – Check Appropriate Item

___ Weekly Deduction

___ Bi-Weekly Deduction

___ One Time Deduction – Fully recovered by employer

Date of Authorization: _____

Employee's Signature: _____

Employer's Signature: _____

Project Name & Number: _____

Project Location: _____



HUD's Section 3 Business Registry

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Registro comercial de Sección 3 de HUD

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Para recibir copias adicionales, consulte la publicación número: HUD-9872-FHEO
Spanish



HUD Compliance and Monitoring?

HUD monitors the performance of recipients and contractors. HUD examines employment and contract records for evidence of actions taken to train and employ Section 3 residents and to award contracts to Section 3 businesses. HUD provides technical assistance to recipients and contractors in order to obtain compliance with Section 3 requirements.



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

There is a complaint process. Section 3 residents and business concerns may file complaints if they think a violation of Section 3 requirements has occurred where a HUD-funded project is planned or underway. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. There are appeal rights to the Secretary. Section 3 residents and businesses may also seek judicial relief.



How can Section 3 businesses or residents complain about a violation of Section 3 requirements?

They can file a complaint in writing to the local HUD FHEO Office or to:

The Assistant Secretary for Fair Housing and Equal Opportunity

U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5100
Washington, DC 20410-2000
1-800-669-9777
1-800-927-9276 (TTY)

www.hud.gov www.espanol.hud.gov

A written complaint should contain:

1. Name and address of the person filing the complaint;
2. Name and address of subject of complaint (HUD recipient or contractor);
3. Description of acts or omissions in alleged violation of Section 3;
4. Statement of corrective actions sought.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Section 3

Economic Opportunity

A Piece of the American Dream



U.S. Department of Housing and Urban Development



Fair Housing and Equal Opportunity

April 2006

HUD-1476-FHEO Rev 2

OMB Approval Number 2529-0043 (exp. 8/31/2007)

Previous Editions are Obsolete

Section 3 Act

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (as amended), requires that economic opportunities generated by certain HUD financial assistance for housing (including Public and Indian Housing) and community development programs shall, to the greatest extent feasible, be given to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Other HUD programs covered by Section 3 (to distinguish between HUD Public and Indian housing programs) are those that provide housing or community development assistance for housing rehabilitation, housing construction, or other public construction project.

Who are Section 3 residents?

Public housing residents including persons with disabilities.

Low and very low income persons who live in the area where a HUD assisted project is located.

What is a Section 3 business?

A section 3 business is one:

That is owned by Section 3 residents
Employs Section 3 residents or;
Subcontracts with businesses that provide opportunities to low and very low income persons.

What types of Economic Opportunities are available under Section 3?

- ✓ Jobs and Employment opportunities
- ✓ Training and Educational opportunities
- ✓ Contracts and Business opportunities

Who will provide the Economic Opportunities?

Recipients of HUD financial assistance and their contractors and subcontractors are expected to develop a Section 3 Plan to assure that economic opportunities to the greatest extent feasible, are provided to low and very low-income persons and to qualified Section 3 businesses. One element of that Plan is the use of a Section 3 clause which indicates that all work performed under the contract are subject to the requirements of Section 3.

Who receives Economic Opportunities under Section 3?

For training and employment:

- ✓ persons in public and assisted housing;
- ✓ persons in the affected project neighborhood;
- ✓ participants in HUD Youth-build programs;
- ✓ homeless persons.

For contracting:

- ✓ businesses which fit the definition of a Section 3 business.

How can individuals and businesses find out more about Section 3?

Contact the Fair Housing and Equal Opportunity representative at your nearest HUD Office.



¿Cómo obliga el HUD a cumplir la ley y cómo vigila su cumplimiento?

El HUD vigila el desempeño de los receptores de la asistencia y de los contratistas. El HUD examina las constancias de empleo y de las contrataciones para saber si se han tomado medidas para capacitar y dar empleo a los residentes según la Sección 3, así como para adjudicar contratos a las empresas según la Sección 3.



¿Qué se hace si alguna empresa parece no cumplir con la Sección 3?

Existe un procedimiento de denuncia. Los residentes y las empresas según la

Sección 3 pueden presentar denuncias si consideran que ha ocurrido una infracción de los requisitos de la Sección 3 que afecta a un proyecto financiado por el HUD, planificado o en vías de realización. Estas denuncias se investigarán y se procurará resolverlas de forma voluntaria. Hay derecho de apelación ante el Secretario. Los residentes y las empresas según la Sección 3 también pueden recurrir al desagravio por vía judicial.



¿Cómo pueden quejarse las empresas o los residentes según la Sección 3 de las infracciones de la misma?

Pueden presentar una denuncia por escrito a la delegación local de HUD/FHEO o a:

The Assistant Secretary for Fair Housing and Equal Opportunity

U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5100
Washington, DC 20410-2000
1-800-669-9777
1-800-927-9276 (TTY)
www.espanol.hud.gov

En las denuncias por escrito se incluirán los datos siguientes:

- Nombre y dirección del denunciante;
- Nombre y dirección del denunciado (beneficiario o contratista del HUD);
- Descripción de los actos u omisiones que supuestamente han infringido la Sección 3;
- Declaración de las medidas correctivas que se solicitan.

HUD-1476-FHEO Rev 2 (Spanish) (4/06)

Departamento de Vivienda y Desarrollo Urbano de los Estados Unidos de América

SECCIÓN 3 OPORTUNIDAD ECONÓMICA

Un trozo del ideal americano



Departamento
de Vivienda y Desarrollo Urbano de los
Estados Unidos



Equidad de Vivienda e Igualdad de
Oportunidades

April 2006

HUD-1476-FHEO Rev 2 (Spanish)

OMB Approval Number 2529-0043 (exp. 8/31/2007)

Previous Editions are Obsolete

Sección 3 de la Ley

Conforme a la Sección 3 de la Ley de Vivienda y Desarrollo Urbano de los Estados Unidos de 1968 (que figura en la Sección 1701u, enmendada, del título 12 del Código de los Estados Unidos), las oportunidades económicas que generen determinados tipos de asistencia financiera concedida por el Departamento de Vivienda y Desarrollo Urbano (HUD), incluida la destinada a la vivienda pública y la de los pueblos indígenas, se deberá proporcionar, en lo que sea factible, a las personas de ingresos bajos o muy bajos, especialmente a las que reciben asistencia pública para la vivienda, así como a las empresas que ofrecen oportunidades económicas a esas personas.

El HUD también administra otros programas conforme a la Sección 3. Para distinguir entre los programas para la vivienda pública y los destinados a los pueblos indígenas, estos otros programas proporcionan asistencia para la vivienda o para el desarrollo comunitario dirigida a la rehabilitación y construcción de viviendas o a otros proyectos de construcción pública.

¿Quiénes son los residentes según la Sección 3?

Los residentes de viviendas públicas, incluidos los discapacitados.

Las personas de ingresos bajos o muy bajos que viven donde hay bloques de viviendas que reciben asistencia del HUD.

¿Cuáles son las empresas según la Sección 3?

Por una empresa según la Sección 3 se entiende:

- La que es propiedad de residentes según la Sección 3.
- La que emplea a residentes según la Sección 3.
- La que subcontrata a empresas que proporcionan oportunidades a personas de ingresos bajos o muy bajos.

¿Qué tipos de oportunidades económicas se ofrecen según la Sección 3?

- ✓ Oportunidades de trabajo y empleo
- ✓ Oportunidades de capacitación y educación
- ✓ Contracts and Business opportunities

¿Quién proporcionará las oportunidades económicas?

Los receptores de la asistencia financiera del HUD y sus contratistas y subcontratistas están obligados a elaborar planes conforme a la Sección 3 para asegurar que, en lo que sea factible, se proporcionen oportunidades a las personas de ingresos bajos o muy bajos y a las empresas que reúnan las condiciones que estipula la Sección 3. En esos planes se especificará que todos los trabajos efectuados conforme al contrato cumplan con los requisitos de la Sección 3.

¿Quién recibe las oportunidades económicas según la Sección 3?

Con fines de capacitación y empleo:

- ✓ Los residentes en viviendas públicas o subvencionadas;
- ✓ Los residentes en el vecindario de las viviendas públicas o subvencionadas;
- ✓ Los participantes en los programas del HUD de ayuda a la juventud (Youth-build programs);
- ✓ Las personas sin hogar.

Para conseguir contratos:

- ✓ Los negocios que se ajusten a la definición de las empresas según la Sección 3.

¿Cómo pueden las personas y las empresas recibir más información acerca de la Sección 3?

Deben comunicarse con el representante de la Oficina para la Equidad de Vivienda e Igualdad de Oportunidades (Fair Housing and Equal Opportunity, FHEO), en la delegación del HUD más cercana.

Frequently Asked Questions (FAQs)

Section 3 of the Housing & Urban Development Act of 1968

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GENERAL QUESTIONS

1. What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

2. What does “To the Greatest Extent Feasible Mean?”

By to the “Greatest Extent Feasible”, the Department means the every effort must be made to comply with the regulatory requirements of Section 3. By this, the Department means that recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. For instance, this may mean going a step beyond normal notification procedures for employment and contracting procedures by developing strategies that will specifically target Section 3 residents and businesses for these types of economic opportunities.

3. What does the term “Section 3 resident” mean?

A “section 3 resident” is: 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or non-metropolitan county where the Section 3 covered assistance is expended.

4. What does the term Section 3 Business Concern mean?

Section 3 business concerns are businesses that can provide evidence that they meet one of the following criteria:

- a) 51 percent or more owned by Section 3 residents; or
- b) At least 30 percent of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire*; or
- c) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to business concerns that meet one of the first two qualifications above.

*Example: Alysha was an unemployed Section 3 resident that was first hired by ABC Company on January 1, 2011. She received a raise of \$2,500 in March 2012, thereby boosting her household income above the local low income level. ABC Company may continue to count Alysha as one of their Section 3 employees until December 31, 2013 (i.e. within three years of the date of first hire).

5. How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise programs?

Section 3 is both race and gender neutral. The preferences provided under this regulation are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents, and the businesses that employ these persons, within their community regardless of race and/or gender.

To learn more about the Minority Business Enterprise and Women Business Enterprise programs, please contact HUD's Office of Small and Disadvantaged Business Utilization at 202-708-1428, or visit their website, located at:

http://portal.hud.gov/portal/page/portal/HUD/program_offices/sdb.

6. How are "low-income" and very low-income determined?

Low- and very-low-household income limits are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the median income for each locality by household size or the number of people residing in one house. HUD income limits may be obtained from:

<http://www.huduser.org/portal/datasets/il.html>

7. What are "metropolitan areas" and "non-metropolitan counties?"

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget. A non-metropolitan county means any county outside of a metropolitan area.

A current list of MSAs can be found at:

<http://www.census.gov/population/www/metroareas/metrodef.html>

8. What is a “new hire”?

A new hire means a full-time employee for a new permanent, temporary, or seasonal position that is created as a direct result of the expenditure of Section 3 covered financial assistance.

9. Can laid-off workers that are “re-hired” as a result of a HUD-funded project considered new hires?

Yes. Any employee that was not on the payroll of a recipient, developer, or contactor on the day that Section 3 covered assistance was provided can be counted towards the Section 3 minimum numerical goal for employment.

10. What is a Section 3 covered project?

A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

11. Who is considered a recipient of Section 3 funding?

A recipient is any entity which receives Section 3 covered assistance, directly from HUD or from another recipient (i.e., a PHA; unit of State or local government; property owner; developer; etc). It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 resident.

12. Which recipient agencies (or sources of HUD financial assistance) are required to comply with Section 3?

Public Housing Authorities (PHAs) regardless of size or number of units are required to comply with Section 3. One exception is PHAs that only receive or administer tenant-based Housing Choice (Section 8) Vouchers and do not utilize any of the financial assistance described above. Although they are exempt, compliance with Section 3 is encouraged.

Section 3 also applies to recipients of more than \$200,000 from housing and community development programs. The following are a list of examples of such funds:

- Community Development Block Grant (CDBG)
- HOME Investment Partnership
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)

- Economic Development Initiative (EDI)/Brownfield Economic Development Initiative Grants
- Housing Opportunities for Persons with AIDS (HOPWA)
- Homeless Assistance Grants (ESG)
- University Partnership Grants
- Economic Stimulus Funds (including CDBG-R and CFP Supplemental)
- 202/811 Grants
- Lead Hazard Control Grants

*Note: The requirements of Section 3 typically apply to recipients of HUD funds that will be used for housing construction, rehabilitation, or other public construction. Contact the Economic Opportunity Division at section3@hud.gov to determine applicability to a particular project/activity.

13. Can a non-profit organization be considered a “business concern” for the purposes of Section 3?

Yes. A non-profit organization can be a legitimate business concern. Non-profit organizations must meet the criteria of a Section 3 business concern as defined at 24 CFR Part 135.5 in order to receive Section 3 preference.

14. What is a Service Area?

The Service area is the geographical area in which the persons benefiting from the Section 3 covered project reside. The Service Area shall not extend beyond the unit of local government in which the Section 3 covered financial assistance is expended.

APPLICABILITY

15. What is Section 3 covered assistance?

Section 3 covered assistance includes:

- Public and Indian Housing Operating Subsidy; Capital Funds; or Modernization assistance; and

- Housing and community development assistance expended for housing rehabilitation, housing construction, or other public construction.

16. What are funding thresholds and how do they apply to Section 3 covered financial assistance?

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. There are no thresholds for public and Indian housing (PIH) programs. The requirements of Section 3 apply to all PIH programs regardless of the amount of assistance received from HUD.

The Section 3 requirements apply to recipients of Housing and/or Community Development Assistance exceeding \$200,000 combined from all sources in any one year. Section 3 covers the expenditure of any portion of those funds for any activity that involves housing construction, rehabilitation, or other public construction.

For example, a city **receives** \$600,000 for CDBG, \$150,000 in HOME Funding, and \$75,000 in NSP funding. This represents a total of \$825,000 in housing and community development assistance. As such, any construction or rehabilitation activities funded by the city using those funds is covered by Section 3.

17. Do the requirements of Section 3 apply to grantees on a “per project” basis?

No. Any agency that receives covered assistance that exceeds \$200,000 is required to comply with the requirements of Section 3 whenever any projects involving housing construction, rehabilitation, or other public construction are administered, regardless of the actual dollar amount of covered assistance that is invested into the individual project/activity.

18. If a project is funded with non-HUD assistance, do the requirements of Section 3 still apply?

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3.

19. What dollar threshold amounts apply to contractors/subcontractors?

All contracts (or subcontracts) funded with Public and Indian Housing assistance, regardless of dollar amount or type of contract, is subject to the requirements of Section 3.

With respect to recipients of Housing and/or Community Development funding, all contractors or subcontractors that receive covered contracts in excess of \$100,000 for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3.

20. What responsibilities do contractors/subcontractors have if they receive Section 3 covered contracts?

If the contractor/subcontractor has the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The same numerical goals apply to contractors and subcontractors (i.e., 30 percent of new hires, 10 percent of construction contracts, and 3 percent of non-construction contracts). In addition, the contractor/subcontractor must notify the recipient agency about their efforts to comply with Section 3 and submit any required documentation.

21. Do the Section 3 requirements apply to material only contracts?

No. Section 3 does not apply to material only contracts or those that do not require any labor. For example, a contract for office or janitorial supplies would not be covered by Section 3. In this example, Section 3 would be encouraged but not required. However, a contract to replace windows that includes the removal of existing windows and the installation of new windows would be covered.

22. Are maintenance projects covered by Section 3?

Yes, but only for PIH funded programs administered by Public Housing Authorities.

23. Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?

Yes, reduction and abatement of lead-based paint hazards does constitute housing rehabilitation and is covered by Section 3.

24. Are demolition projects covered by the requirements of Section 3?

Yes. Recipients of Section 3 covered assistance should make efforts to award a minimum of ten percent of the total dollar amount of all demolition contracts to Section 3 businesses.

25. Are professional service contracts covered under Section 3?

Yes, the term "Section 3 covered contract" includes professional service contracts provided that the work to be performed is generated by the expenditure of Section 3 covered Public and Indian housing assistance, or for work arising in connection with projects involving housing rehabilitation, housing construction, or other public construction.

26. Does Section 3 apply to new hiring by a CDBG-Entitlement recipient?

Yes. If the recipient intends to use its HUD allocation to hire additional staff person(s) to perform work related to housing construction, rehabilitation, or other public construction, then the position(s) is covered by Section 3. However, if the local municipality uses a civil servant applicant process to hire new employees, compliance with the requirements of Section 3 may not be feasible.

27. Does Section 3 apply to new hiring by a Public Housing Authority?

Yes. Section 3 applies to all Public and Indian Housing capital, operating or development funds; therefore, new hiring done by the PHA (regardless of the position) is covered by Section 3.

28. For community development and other housing assistance, do the thresholds apply to the total amount of HUD assistance received or the amount of funds invested into Section 3 covered projects/activities?

The threshold applies to the total amount of HUD assistance received. Example: the City of Mountain View, receives \$210,000 through the State CDBG program. The funds will be used as follows:

- a. Housing rehabilitation- \$180,000;
- b. micro-enterprise revolving loan fund- \$20,000; and
- c. Fair housing counseling- \$10,000.

City of Mountain View is subject to Section 3 requirements because they received over \$200,000 in housing and community development funds. However, only the funds expended for Section 3 covered activities must comply with the requirements of Section 3. Therefore, the expenditure of the \$180,000 is covered by Section 3. The remaining \$30,000 that was used for fair housing counseling and a revolving loan fund is not covered by Section 3.

29. Are contracts cumulative for reaching the Section 3 threshold?

No. Contracts for Section 3 covered projects are not cumulative. The requirements of Section 3 apply to each individual contract that meets the thresholds.

For example, if a recipient agency awards 3 housing rehabilitation contracts (at \$36,000; \$50,000; and \$20,000 for a cumulative total of \$106,000) to one contractor for three different projects within a twelve month period, the contractor is not required to comply with the requirements of Section 3 because none of his contracts met the \$100,000 threshold. Accordingly, the responsibility for meeting the requirements of Section 3 would remain with the recipient agency that awarded the contracts.

CONSISTENCY WITH OTHER LAWS

30. Does Section 3 apply to other State/local laws?

Yes. Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with local laws and regulations. Accordingly, recipients of Section 3 covered assistance are required to develop strategies for meeting both the regulatory requirements at 24 CFR Part 135 and any other applicable statutes or regulations.

31. What is the relationship between Section 3 and Davis Bacon requirements?

Compliance with Section 3 must be achieved consistent with the requirements of Davis-Bacon. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work.

32. What is the relationship between Section 3 and Minority Business Enterprises (MBEs)?

'Minority business enterprise' (MBE) means a business enterprise that is owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.

Section 3 preferences are race and gender neutral. A minority and/or woman owned business enterprise must provide evidence that it meets at least one criterion of a Section 3 business outlined above in order to receive preference under Section 3. However, the Department anticipates that Section 3 will serve to support, and not impede, contract opportunities for minority business enterprises.

The MBE designation may provide preferences promoted by other statutes and regulations, such as goals for MBEs, and other socially and economically disadvantaged businesses. Additional information about the MBE program can be obtained by calling the HUD Office of Small and Disadvantaged Business Utilization at 202-708-1428.

RECIPIENT RESPONSIBILITIES

33. What are the responsibilities of recipient agencies under Section 3?

Recipients are required to ensure their own compliance and the compliance of their contractors/subcontractors with the Section 3 regulations, as outlined at 24 CFR § 135.32. These responsibilities include but may not be necessarily limited to the following.

- Designing and implementing procedures to comply with the requirements of Section 3 in order to comply with Section 3: Recipient agencies must take an **active role** in ensuring Section 3 compliance. The first step is designing or planning and implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3.
- Facilitating the training and employment of Section 3 residents: The recipient agency must act as a facilitator, connecting Section 3 residents to training and employment opportunities.
- Facilitating the award of contracts to Section 3 business concerns: The recipient agency must also work to link developers and contractors with capable Section 3 business concerns. Additionally, recipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity building training.
- Ensuring Contractor and Subcontractor Awareness of Section 3 Goals and Responsibilities: The recipient agency is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.
- Ensuring Compliance and Meeting Numerical Goals: Recipient agencies shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance; assisting and actively cooperating with the Secretary of HUD in obtaining the compliance of contractors; Penalizing non-compliance; Providing incentives for good performance; and Refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.
- Reporting Requirements: Recipient agencies must document all actions taken to comply with the requirements of Section 3: Recipient agencies must submit a Section 3 Annual Summary Report (Form HUD-60002) for all covered

funding to the Office of Fair Housing and Equal Opportunity. Section 3 reports shall be submitted electronically online at: www.hud.gov/section3.

34. What are good strategies for targeting Section 3 residents and businesses?

In order to target Section 3 residents and businesses, recipients must establish and maintain an effective Section 3 program. HUD has found that hiring a Section 3 coordinator or assigning one individual the responsibility of coordinating all Section 3 related activities to be instrumental for reaching the employment and contracting goals.

It is recommended that recipient agencies establish procedures to certify Section 3 residents and Section 3 business concerns and incorporate some form of preference for employment and contracting opportunities. Thereafter, they should maintain a list of eligible residents and businesses by skill, capacity or interest and contact them on a periodic basis when employment and contracting opportunities are available. Refer to the Section 3 Regulations at 24 CFR Part 135.32 for a listing of responsibilities and the Appendix to the Section 3 regulations for additional examples of effective strategies.

35. Are funds provided to recipients so that they can comply with the requirements of Section 3?

No. Since Section 3 requirements are only triggered when the normal expenditure of covered funds results in employment, training, or contracting opportunities, there is no need for the Department to provide funds to meet the recipient responsibilities set forth in the regulation.

36. Does Section 3 require recipient agencies to create new (or unnecessary) training, employment, and contracting opportunities?

Recipient agencies are not required to create jobs or contracts for Section 3 residents and business concerns simply for the sake of creating them. Section 3 requires that **when** employment or contracting opportunities are generated because a project or activity undertaken by a recipient of covered HUD financial assistance necessitates the employment of additional personnel through individual hiring or the awarding of contracts, the recipient must give preference in hiring to low- and very low- income persons and/or businesses that are owned by these persons or that substantially employ them.

37. Are Section 3 residents or business concerns guaranteed employment or contracting opportunities under Section 3?

Section 3 is not an entitlement program, there are no guarantees. Residents and businesses must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

Section 3 requirements provide preference to Section 3 residents and business concerns, but not a guarantee.

38. Are recipients, developers, and contractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?

Recipients, developers, and contractors are required, to the extent feasible, to direct all employment opportunities to low- and very low-income persons- including seasonal and temporary employment opportunities. Employment goals are based on 'new hires,' which are defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients, developers, and contractors are encouraged to provide long-term employment.

39. When might a recipient agency be exempt from the requirements of Section 3?

Typically, the Department does not grant any exemptions or waivers related to Section 3.

40. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?

No. Recipients are not required to request noncompliant contractors make payments into a fund.

Providing employment, training, and subcontracting opportunities to Section 3 residents and businesses must be the primary goal of developers/contractors. However, such a fund can be used in very specific instances as a penalty for noncompliance.

SECTION 3 PREFERENCE

41. How can a prospective Section 3 resident or business certify that they meet the eligibility requirements?

The individual or business must contact the agency or developer that they are seeking employment or contracting opportunities from (i.e., the PHA, city, or local government). They should identify themselves as a Section 3 resident or business and provide whatever documentation that the recipient agency requires under their certification procedures.

42. Who is responsible for certifying that residents and businesses meet the regulatory definitions under Section 3?

The regulation allows recipient agencies to use their discretion for developing specific procedures to meet the requirements of Section 3. This includes establishing their own standards/processes for verifying eligibility of Section 3 residents and businesses (or not). Each recipient is also free to accept or reject the standards/process used by other recipients or pay for the services of a third party vendor to determine eligibility. While HUD does not endorse the services of private, third party vendors, recipient agencies may employ such services at their discretion.

43. What are examples of acceptable evidence to determine eligibility as a Section 3 resident?

HUD does not prescribe that any specific forms of evidence to establish Section 3 eligibility. Sample certification documents can be found on the [Section 3 website](#). Acceptable documentation includes, but is not limited to the following:

- Proof of residency in a public housing development;
- Evidence of participation in a HUD Youth build program operated in the metropolitan area (or non-metropolitan county) where the Section 3 covered assistance is spent;
- Evidence that the individual resides in the Section 3 area and is a low or very low-income person, as determined by local HUD income limits;

44. What are examples of acceptable evidence for determining eligibility as a Section 3 business?

HUD does not prescribe that any specific forms of evidence be required to establish Section 3 eligibility. Sample certification documents can be found on the [Section 3 website](#). The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

- 51 percent or more owned by Section 3 residents; or
- Has permanent, full time employees at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- Has a commitment to sub-contract in excess of 25 percent of the total dollar award of all sub-contracts to be awarded to such businesses described above.

45. Are all public and Indian housing residents considered Section 3 residents regardless of their income?

Yes. Public and Indian housing residents need only show proof of residency in public housing within the metropolitan area (or non-metropolitan county). Other residents of the Section 3 area may need to show proof of residency in the metropolitan area (or non-metropolitan county) and meet the HUD income requirements.

46. Can recipient agencies allow residents or businesses to “self-certify” that they meet the Section 3 eligibility requirements?

As previously mentioned, the regulation allows recipient agencies to use their own discretion to develop specific procedures for meeting the requirements of Section 3. Many recipient agencies choose to allow prospective Section 3 residents or businesses to self-certify their eligibility. The Department recommends that any self-certification should include a statement of penalty for falsifying information.

47. Are Section 3 business concerns only certified to receive preference in the community in which they are located?

No. While certification is locality specific, recipient agencies can count a Section 3 business that is located outside of its immediate jurisdiction towards their efforts to meet the minimum numerical goals. However, recipient agencies should not provide preference to a Section 3 that is not located in their jurisdiction if a local Section 3 business has also submitted a qualified bid for a contract and can complete the work to be done. Refer to the order of priority preference for Section 3 contract opportunities at 24 CFR Part 135.36.

48. Does preference to a Section 3 business mean that the business should be selected if it meets the technical requirements of the bid, regardless of bid price?

No. As provided in 24 CFR 85.36(b) (8), contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. In order to meet the requirements of Section 3 and Federal Procurement laws, recipient agencies must develop procedures that are consistent with all applicable regulations.

49. Can contracting with MBE/WBE businesses count towards Section 3 contracting goals?

Section 3 is race and gender neutral. Only MBEs/WBEs that meet the eligibility criteria set forth in the regulation can they be counted towards the minimum goals for Section 3 contracting opportunities.

50. Does a business have to be incorporated to be considered a Section 3 eligible business?

A Section 3 business concern can be any type of business, such as a sole proprietorship, partnership or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.

ECONOMIC OPPORTUNITIES/NUMERICAL GOALS

51. How can residents and businesses locate recipient agencies that are required to comply with Section 3 in their area?

To find local recipients agencies, Section 3 residents or businesses should contact their local HUD office. To find your closest office, visit: www.hud.gov/localoffices

52. How can I find Section 3 businesses in my area?

Contact local recipient agencies to find Section 3 business concerns in your area.

53. What types of new employment opportunities are covered by Section 3?

For public and Indian housing (PIH) programs, all employment opportunities generated by the expenditure of operating, capital, and modernization assistance, including management and administrative jobs, technical, professional, construction and maintenance jobs, at all levels.

For housing and community development programs, all employment opportunities arising in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards); housing construction; or other public construction, including management and administrative jobs, technical, professional, building trades and non-construction jobs, at all levels.

54. Are recipient agencies required to meet the Section 3 goals, or are they optional?

The Section 3 numerical goals are minimum targets that must be reached in order for the Department to consider a recipient in compliance. Recipient agencies are required to make best efforts to the greatest extent feasible, to achieve the annual numerical goals for employment and contracting. If an agency fails to fully meet the Section 3 numerical goals, they must adequately document the efforts taken to meet the numerical goals (see Question #2 for a discussion of “to the greatest extent feasible”).

55. What are the Section 3 minimum numerical goals?

The minimum numerical goal for employment is thirty (30) percent of the aggregate number of new hires shall be Section 3 residents, annually- i.e., 3 out of 10 new employees needed to complete a Section 3 covered project/activity shall be Section 3 residents.

The minimum goals for contracting are:

- Ten (10) percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing or building trades work arising in connection with

housing rehabilitation, housing construction and other public construction, shall be awarded to Section 3 businesses; and

- Three (3) percent of the total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 businesses

56. What is considered a Section 3 covered “non-construction” project?

Section 3 covered non-construction projects include maintenance contracts, including lawn care, re-painting, routine maintenance, HVAC servicing, and professional service contracts associated with construction (ex.: architectural, engineering, legal services, accounting, marketing, etc.).

57. What is considered "other" public construction?

Other public construction includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, installing conduits for utility services, etc.

58. Are the numerical goals the same as set-asides and quotas?

No. A set-aside guarantees that a specific portion of funds will be provided to a protected class. Section 3 goals are minimum numerical targets that a recipient of HUD Section 3 covered financial assistance must try to reach to attain compliance with Section 3.

59. What is the meaning of the “safe harbor” determination?

When a recipient agency or contractor meets the numerical goals, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

60. What should recipient agencies or contractors do if they fail to meet the minimum numerical goals set forth in the regulation?

Recipient agencies and their contractors must adequately document all efforts taken to comply with the requirements of Section 3, and explain why despite their efforts “to the greatest extent feasible”; the minimum numerical goals were not met.

The Department will take each agency’s explanation into consideration when making compliance determinations.

RECORDKEEPING AND REPORTING

61. What are the recordkeeping requirements of Section 3 recipient agencies?

Documentation of actions taken to comply with the employment, training and contracting requirements of Section 3, the results of actions taken and impediments encountered. Recipient agencies should maintain records of job vacancies, solicitation for bids or proposals, selection materials, and contract documents (including scope of work and contract amount), in accordance with Federal or State procurement laws and regulations. The documentation should demonstrate efforts taken towards the achievement of the Section 3 numerical goals.

62. Who is required to submit Section 3 reports?

Each direct recipient of Section 3 covered HUD financial assistance shall submit an annual report for the purpose of determining the effectiveness of Section 3. Section 3 summary reports, form HUD 60002, are required even if the recipient agency did not undertake any activities that triggered the requirements. Subrecipients, developers, and contractors should not submit Section 3 annual reports directly to the Department.

63. Where should Section 3 summary reports (Form HUD 60002) be submitted?

The Department has developed an online reporting system to allow grantees to submit Section 3 reports (form HUD 60002) directly to FHEO. Reports should be submitted online at: www.hud.gov/section3 from the [Section 3 website](#).

64. After an agency submits its Section 3 report online, should a hard copy of the form also be submitted to HUD by fax, email, or mail?

No. Since the Department has an online reporting system, it is not necessary for agencies to submit hard copies (or paper copies) of reports to FHEO. The Department is making an effort to go "paperless" and wants to reduce paper submissions of Section 3 reports.

However, it is recommended that grantees retain a copy of their completed Section 3 reports on file and optionally submit them as an attachment to their annual performance report if applicable (CAPERS report for CDBG, HOME and ESG Programs).

65. Are contractors or developers required to submit Section 3 reports directly to HUD?

No. Contractors and/or developers should not submit Section 3 reports to HUD. Only direct recipients (agencies) are required to submit Section 3 reports to HUD. Contractors should maintain adequate documentation to demonstrate compliance

with Section 3 and forward information to the direct recipient (i.e., the agency that awarded them a covered contract) as directed or upon request.

66. Should recipient agencies establish a reporting system for their contractors and subcontractors?

Yes, reports compiled by contractors and subcontractors will assist the recipient agency in gathering the necessary data for submission to HUD.

67. When are Section 3 annual reports (Form HUD 60002) due?

Depending on the source of funding, annual reports should be submitted at one of three times:

- 1) At the time the recipient submits an annual performance report;
- 2) By January 10 of each year if no program annual performance report is required; or
- 3) Within ten (10) days of project completion, whichever is earlier.

- PHAs should submit form HUD60002 by January 10th.
- Grantees Awarded funding for Section 202/811 should submit form HUD 60002 by January 10th.
- Grantees Awarded funding for CDBG, HOME and/or ESG should submit form HUD 60002 at the same time they submit the CAPER report.
- Grantees Awarded funding for lead abatement activities should submit form HUD 60002 with their annual reports no later than September 30th.

68. Where can I find instructions for completing form HUD 60002?

Instructions for completing form HUD 60002 can be found on the Section 3 website at www.hud.gov/section3. Additional technical assistance for completing form HUD 60002 can be obtained by submitting an email request to: section3@hud.gov.

69. How can a recipient agency request a copy, make corrections, or delete its own Section 3 annual report?

The recipient agency should submit an email request to section3@hud.gov. Requests should contain the agency's name along with the year, grant number, and dollar amount of the report in question.

70. How can I obtain copies of 60002 reports for another local recipient agency?

Copies of 60002 reports for local recipient agencies for which you are not affiliated with can be obtained by completing and submitting a Freedom of Information Act (FOIA) request at: <http://www.hud.gov/offices/ogc/foia/foiarequests.cfm>.

71. Are agencies required to submit Form HUD 2516 to demonstrate compliance with Section 3?

No. Agencies are not required to submit Form HUD 2516 to demonstrate compliance with Section 3. In addition, while Form HUD 2516 does capture some Section 3 data, it is not sufficient to demonstrate overall compliance to the Department. The only form that should be submitted for Section 3 reporting requirements is form HUD 60002.

SECTION 3 COMPLAINTS

72. Who can file a complaint that alleges non-compliance with the requirements of Section 3?

Any Section 3 resident or Section 3 business (or authorized representative) seeking employment, training, or contracting opportunities generated by Section 3 covered assistance may file a complaint using form HUD 958.

73. Where should Section 3 complaints be submitted?

Effective November 2007, Section 3 complaints must be filed at the appropriate FHEO Regional Office where the violation occurred. Please visit www.hud.gov/offices/fheo to obtain the address and telephone number for FHEO regional offices.

74. Where can I find form HUD 958?

Copies of the Section 3 complaint form (HUD 958), filing instructions and mailing addresses may be obtained at: www.hud.gov/section3.

75. Is there a time limit for filing a Section 3 complaint?

Yes. Section 3 complaints must be filed no later than 180 days from the date of the action or omission upon which the complaint is based.

76. What happens during an investigation?

Once a timely complaint has been filed with the appropriate Regional Office, the Department will determine if the complainant has jurisdiction or is covered by Section 3 regulations. An investigator will be assigned the case and will notify the respondent about the complaint. The respondent has the option of resolving the complaint or

contesting it. If the respondent contests or denies the allegations of noncompliance contained in the complaint, the investigator will proceed to gather facts or evidence from both parties. Thereafter, the investigator will prepare a letter of findings and either make a determination of noncompliance or dismiss the complaint.

77. What happens if HUD determines a recipient is in noncompliance?

Pursuant to 24 CFR 135.76, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the Section 3 covered assistance is provided.

78. Can complainants appeal the initial decision made in a Section 3 complaint?

A complainant can submit a written appeal to the Assistant Secretary for Fair Housing and Equal Opportunity in Washington, DC within 15 days after the Regional Office makes its determination. Requests should be sent to:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW
Room 5100
Washington, DC 20410

79. Where else can I file complaints alleging denied employment and contracting opportunities?

If you are denied employment and/or contracting opportunities, you *may* have standing to bring a complaint at HUD under Title VI of the Civil Rights Act and/or Section 109 of the Housing and Community Development Act of 1974.

You may also be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about your rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: <http://www.dol.gov/ofccp/>

Bexar County

Section 3 Plan

Section 3 Purpose

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended, requires that Bexar County to ensure that training, employment and other economic opportunities generated by certain HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low- income persons, particularly those who are recipients of governmental assistance for housing, and to businesses that provide economic opportunities for these persons.

County Responsibilities

Bexar County will ensure that the contractors and subcontractors performing work on Section 3 funded activities are in compliance with the Section 3 requirements as well as meeting or exceeding the numerical goals as outlined in the HUD Act.

To fulfill this responsibility Bexar County's Community Development and Housing Division is responsible for compliance and monitoring of all Section 3 activities for Community Development Block Grant and HOME Investment Partnership Program funded projects.

The initial steps that must be taken by Bexar County Community Development and Housing Division are to ensure that the County and its contractors meet or exceed the designated numerical goals will be to complete the following requirements below.

- Conduct training for staff and contractors
- Notify contractors of Section 3 responsibilities
- Document Section 3 compliance actions
- Participate in the pre-bid, pre-construction, bid opening and or construction meetings to ensure that Section 3 Business Concerns are addressed.
- Ensure that the Section 3 clause is noted in all bid advertisements, solicitations and contracts.
- Prepare, create and submit required Section 3 Reports to HUD

The minimum numeric goals are:

- 30 percent of total number of new hires as Section 3 Residents (i.e. 1 out of 3 new hires);
- 10 percent of all awarded construction contracts, awards to Section 3 Business Concerns;
- 3 percent of all awarded non-construction contracts, awards to Section 3 Business Concerns.

Types of economic opportunities available under Section 3:

- Jobs and employment opportunities
- Training and educational opportunities
- Contracts and business opportunities

Section 3 Residents

Types of recipients receiving economic opportunities under Section 3 that should be given priority in hiring are those who are:

- Persons in public assisted housing including persons with disabilities
- Persons in the affected project neighborhood
- Participants in HUD Youth-build programs
- Homeless persons residing in the service area or neighborhood in which the Section 3 covered project is located to comply with the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*)

A resident seeking Section 3 preference shall submit a Section 3 Resident Certification Form to Bexar County, the contractor or subcontractor to verify and approve the certification. The County will maintain a list of Section 3 Residents and Business Concerns for current and/or future Section 3 job opportunities.

According to HUD a Self-Certification is an acceptable means for establishing eligibility as a Section 3 Resident. However, recipients may utilize acceptable support documentation with the Section 3 Resident Certification Form to include:

- Proof of residency in a public housing development.
- Evidence of participation in a HUD Youth Build program.
- Copy of Section 8 voucher certificate or voucher.
- Evidence of eligibility or participation in a federally-assisted program for low and very low income persons.
- Evidence that the individual resides in the Section 3 area and is a low or very low income person, as defined in Section 3(b)(2) of the U.S. Housing Act of 1937.

Section 3 Business Concern

Bexar County will determine if a business qualifies for Section 3 designation by reviewing HUD's Section 3 Business Concern Certification listing to see if the applicable business is listed as a Section 3 Business Concern: https://portalapps.hud.gov/Sec3BusReg/BRegistry/AmISection3.action;jsessionid=jkwnjXpcfA2SB_j44kSNxXhu2NooZ8mc_ROiG-h1hF8k9Cpm8mV!-1035962607

A Section 3 Business Concern is one that is:

- Owned by 51 percent or more by Section 3 Residents; or
- Employs at least 30 percent of employees who qualify as Section 3 Residents or within 3 years of the date of first employment with the business concern were Section 3 Residents; or
- Commits to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet one of the first two qualifications above.

Bexar County will include the "Contractor Certification of Efforts to Comply Notice", in all bid packets. Additionally, the County will incorporate the Section 3 Clause into all advertisements, solicitations, federal compliance manual and any contracts or subcontracts in excess of \$100,000 (24 CFR Part 135.38).

Preference for Section 3 Business Concerns:

Preference shall be awarded to Section 3 Business Concerns according to the following system:

- Where the Section 3 Covered Contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 Business Concern with the lowest bid, if it is reasonable and no more than 10 percent higher than the lowest bid of the from any qualified source. If no bid by a qualified Section 3 Business Concern is within 10 percent of the lowest bid from any qualified source, the award shall be made to the source with the lowest bid.
- Where the Section 3 Covered Contract is to be awarded based on factors other than price, a request for bid shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The evaluation will include the provision of preference for Section 3 Business Concerns. The contract shall be awarded to the responsible firm whose bid is the most advantageous, considering price and all other factors specified in the evaluation.

Contractor Requirements

In responding to Bids all contractors and subcontractors are required to comply with the Bexar County's Section 3 Plan. The contractor and the County will review the Section 3 Plan procedures and applicable forms that the contractor will use to report Section 3 requirements.

If the contractor/subcontractor has the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The same numerical goals apply to contractors and subcontractors. In addition, the contractor/subcontractor must notify Bexar County Community Development and Housing Division about their efforts to comply with Section 3 and submit any required documentation.

If a contractor/subcontractor does not have the need to hire new persons to complete the Section 3 covered contract or does not need to subcontract portions of the work to another business concern, they are required to provide documentation showing that no new jobs will be created.

Direct employment of qualified candidates

All Certified Section 3 Business Concerns shall ensure that 30 percent of new hires will be Section 3 residents. During the development of the contract, the contractor will negotiate with the County for the number of Section 3-qualified candidates to be employed. The contract will obligate the contractor to achieve no less than the numerical goal established during the negotiation. Additionally, the Certified Section 3 Business Concern will provide employed Section 3 residents with applicable training and/or educational opportunities.

Guidelines for Direct Employment

- Contractors should provide job opportunities for skilled and unskilled workers.
- Contractors should maintain employment for candidates throughout the duration of a project. Please note that candidates will be employees of the contractor or subcontractor, not Bexar County.
- All contracts using Public Housing resident workers and low and very low income persons who live in the area where a HUD assisted project is located under Section 3 are subject to the Davis-Bacon Act Wage Rate and the current HUD Form 52158, Maintenance Wage Rate Determination.

Compliance and Monitoring of Section 3

The Community Development and Housing Division will analyze and evaluate the contractor's compliance with requirements and obligations set forth in the contract. In the event that a review reveals a contractor has not complied with Section 3 requirements, the County will undertake efforts to help the contractor achieve compliance.

In the event the contractor encounters a problem with a Section 3 employee such as: employee walks off job or quits; termination; job performance; attendance; tardiness; drug or alcohol use, the contractor should fully document the situation and immediately provide the documentation to the Community Development and Housing Division.

Ongoing failure or refusal to comply with the Section 3 Plan and contract may result in payment being withheld by the County until compliance is achieved or termination of the contract. Debarment or suspension of the contractor or limited denial of participation pursuant to 24 CFR Part 135 may result, when applicable.

Reports

The contractor and or sub-contractor shall submit monthly reports regarding the status of each Section 3 participant. An annual report will also be requested from each contractor and/or subcontractor in connection to the performance of each project. This Annual Report will document the efforts and success of all Section 3 participants and subcontractors working under the general contractor, in reaching the percentage goals for employment and business opportunities established in these polices.

Certified Payroll

The contractor and/or subcontractor shall submit weekly-certified payroll reports to the Community Development and Housing Division. This report shall be submitted weekly and clearly identify Section 3 Hires.

Site Visits

The Community Development and Housing Division staff will conduct periodic site visits to the worksite. Staff shall visibly notice each Section 3 hire on site. The general contractor will sign a monitoring form verifying that a Section 3 worker is present. If the worker is not on site, the staff must contact the Section 3 hire.

Failure to Meet Required Goals

The contractor will be given 30 days to achieve compliance otherwise thereafter payment from the County will stop. The contract may be terminated after 60 days.

Training and/or outreach efforts

Bexar County will conduct the following trainings:

- Conduct training for Community Development and Housing staff members annually.
- Conduct training for contractors/subcontractors during pre-bid, pre-construction or construction meetings of a project, as needed.
- Review HUD's Section 3 Business Concern Certification Listing and include in Invitation for Bids.

Reporting Requirements

Bexar County will document actions taken to comply with the requirements of Section 3, the results of actions taken, and impediments encountered. Records will include solicitation of bids or proposals, selection materials and contracting documents including scope of work and contract amount in accordance with Federal and State procurement laws and regulations.

Bexar County will submit to HUD:

- Section 3 Annual Summary Report

Contractors will submit to Bexar County:

- Section 3 Action Plan
- Weekly Certified Payrolls identifying Section 3 employees
- Federal Compliance Manual/Department of Labor forms
- Section 3 Business Effort to Comply Form
- Resident Certification Forms (if applicable)
- Training and Educational Documentation
- No New Hire Documentation

Filing Complaints

Complaints regarding Bexar County's Section 3 Program must be submitted in writing to the Community Development and Housing Division. All complaints must include the complainant's name, address, telephone number, and a brief narrative detailing the complaint, including but not limited to, the date of the alleged violation and the date the alleged violation was discovered. Complaints shall be filed within 30 calendar days after the complainant becomes aware of any alleged violation.

The Community Development and Housing Division will investigate every complaint. All parties involved will have the opportunity to submit testimony and/or evidence as may be available and relevant to the complaint. The Community Development and Housing Division will issue a written determination within 30 days after the filing of the complaint.

Filing a complaint does not terminate a contractor's Section 3 requirements. Contractors remain accountable for fulfilling the agreed upon Section 3 requirements.

All complaints should be submitted to:

Bexar County Community Resources Department
C/O Community Development and Housing Division
233 N. Pecos, Suite 590
San Antonio, TX 78207

Office hours are between 8:00 a.m. and 5:00 p.m. except on posted holiday.

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3
PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY**

Name of Business _____

Address of Business _____

Type of Business: Corporation Partnership
 Sole Proprietorship Joint Venture

Attached is the following documentation as evidence of status:

For Business claiming status as a Section 3 resident-owned enterprise:

- | | |
|--|---|
| <input type="checkbox"/> Copy of resident lease | <input type="checkbox"/> Copy of receipt of public assistance |
| <input type="checkbox"/> Copy of evidence of participation
in a public assistance program | <input type="checkbox"/> Other evidence |

For business entity as applicable:

- | | |
|---|---|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Certificate of Good Standing |
| <input type="checkbox"/> Assumed Business Name Certificate | <input type="checkbox"/> Partnership Agreement |
| <input type="checkbox"/> List of owners/stockholders and
% ownership of each | <input type="checkbox"/> Corporation Annual Report |
| <input type="checkbox"/> Organization chart with names and titles
and brief function statement | <input type="checkbox"/> Latest Board minutes appointing officers |
| | <input type="checkbox"/> Additional documentation |

For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:

- List of subcontracted Section 3 business(es) and subcontract amount

For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- | | |
|--|--|
| <input type="checkbox"/> List of all current full-time employees | <input type="checkbox"/> List of employees claiming Section 3 status |
| <input type="checkbox"/> PHA/IHA Residential lease less than 3
years from day of employment | <input type="checkbox"/> Other evidence of Section 3 status less than 3
years from date of employment |

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- Current financial statement
- Statement of ability to comply with public policy
- List of owned equipment
- List of all contracts for the past two years

Authorizing Name and Signature

(Corporate Seal)

Attested by: _____

SECTION 3 ACTION PLAN

This form must be completed and submitted with the Project Bid or Application.

Project Name: _____

Company Name: _____

Proposed Contract Amount: _____ Contact Name: _____

Phone number: _____ Email Address: _____

Part 1. Overall Project Section 3 Contracting & Employment Goals:

Contractors submitting a bid for the above referenced project must meet Section 3 goals. If the goals are not met, the Contractor must show an effort, to the greatest extent feasible, was made to meet the goals.

10% of Building Trades/Construction Work

(Note: Contracts for purchase of supplies and materials only are not subject to goals unless the contract includes installation of product)

3% of All Other Non-Construction Work
(architect, appraisal, etc.)

30% of New Hires

(Note: one Section 3 resident must be hired when a company makes 1, 2, or 3 new hires)

	Project Total	Section 3 Goals	Section 3 (\$ or #) Goals
Building Trade/Construction Work	\$	10% of TOTAL	\$
Non-Construction Work	\$	3% of TOTAL	\$
New Hires	#	30% of TOTAL	#

Part 2. Statement of Commitment:

By signature below, the undersigned acknowledges to the County of Anoka and its Housing and Redevelopment Authority (collectively the "County") that the undersigned has been provided with information and documents regarding the County's Section 3 Plan which explains the obligations and requirements of any construction project which is funded in part or whole by HUD sourced funds. The undersigned certifies to its commitment to comply with the County's Section 3 Plan, all Section 3 laws and regulations, and to use the Anoka County Job Training Center and the County's Section 3 business list in connection with the above described project.

The undersigned further certifies that the information contained in this Section 3 action plan is accurate and correct. The undersigned understands that the County may impose penalties and sanctions for the submission of any false and inaccurate statements within this document, fails to achieve the Section 3 contracting and employment goals for the project, and/or fails to comply with the County's Section 3 Plan, Section 3 laws and regulations, or its contract obligations.

Signature of Authorized Representative _____ Date _____

Position of Authorized Representative _____

Part IV: SECTION 3 BUSINESS AND EMPLOYMENT PLAN

List all Business Concerns that will be utilized for this Project: (Attach additional sheets if more room is needed)

Company Name	Contact Person	Phone number	Service Provided	Date of contract	Contract amount	Section 3 certified?

List all Business Concerns that will be hiring employees: (Attach additional sheets if more room is needed)

Company Name	# of Current Employees	Proposed # of New Hires	Proposed # of New Hires that are Section 3 eligible	Proposed % of New Hires that are Section 3 eligible

*Attach a list of current employees and their titles

SECTION 3 PROGRAM
Contractor Certification of Efforts to Fully Comply
with Employment and Training Provisions of Section 3

Economic Opportunities for Low and Very Low-Income Persons

THE BIDDER REPRESENTS AND CERTIFIES AS PART OF ITS BID/OFFER THAT IT:

<input type="checkbox"/> Is a Section 3 Business Concern. A Section 3 Business Concern means a business concern: <ol style="list-style-type: none">1. That is 51% or more owned by Section 3 Resident(s); or2. Whose permanent, full-time employees include person, at least 30% of whom are currently Section 3 Residents, or3. That provides evidence of a commitment to subcontract in excess of 25% of the dollar value of all subcontracts to be awarded to Section 3 Business Concerns, that meet the qualification set forth in paragraphs 1 or 2 herein.
<input type="checkbox"/> Is NOT a Section 3 Business Concern, but who has and will continue to seek compliance with Section 3 by certifying the following efforts to be undertaken.

EFFORTS TO AWARD SUBCONTRACTOR TO SECTION 3 CONCERNS:
(Check ALL that apply.)

<input type="checkbox"/> By contacting business assistance agencies, minority contractors associations and community organizations to inform them of the contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids for a portion of the work.
<input type="checkbox"/> By advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas of the applicable development(s) owned and managed by the Housing Authority.
<input type="checkbox"/> By providing written notice to all known Section 3 Business Concerns of contracting opportunities. This notice should be in sufficient time to allow the Section 3 Business Concerns to respond to bid invitations
<input type="checkbox"/> By following up with Section 3 Business Concerns that have expressed interest in the contracting opportunities.
<input type="checkbox"/> By coordinating meetings at which Section 3 Business Concerns could be informed of specific elements of the work for which subcontract bids are being sought.
<input type="checkbox"/> By conducting workshops on contracting procedures and specific contracting opportunities in a timely manner so that Section 3 Business Concerns can take advantage of contracting opportunities.
<input type="checkbox"/> By advising Section Business Concerns as to where they seek assistance to overcome barriers such as inability to obtain bonding, lines of credit, financing, or insurance and aiding Section 3 Businesses in qualifying for such bonding, financing, insurance, etc...
<input type="checkbox"/> Where appropriate, by breaking out contract work into economically feasible units to facilitate participation by Section 3 businesses.
<input type="checkbox"/> By developing and using a list of eligible Section 3 Business Concerns.
<input type="checkbox"/> By actively supporting and undertaking joint ventures with Section 3 Businesses.

EFFORTS TO PROVIDE TRAINING AND EMPLOYMENT TO SECTION 3 RESIDENTS

<input type="checkbox"/> By entering into a "first source" hiring agreements with organizations representing Section 3 Residents.
<input type="checkbox"/> By establishing training programs, which are consistent with the requirements of the Department of Labor, specifically for Section 3 Residents in the building trades.
<input type="checkbox"/> By advertising employment and training positions to dwelling units occupied by Category 1 and 2 residents.
<input type="checkbox"/> By contacting resident councils and other resident organizations in the affected housing development to request assistance in notifying residents of the training and employment positions to be filled.
<input type="checkbox"/> By arranging interviews and conducting interviews on the job site.
<input type="checkbox"/> By undertaking such continued job-training efforts as may be necessary to ensure the continued employment of Section 3 Residents previously hired for employment opportunities.

Contractor Name/Business Name: _____

Authorized Signature of Bidder: _____ **Date:** _____



FY 2014 INCOME LIMITS DOCUMENTATION SYSTEM

HUD.gov [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

FY 2014 Income Limits Summary

FY 2014 Income Limit Area	Median Income	FY 2014 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Bexar County	\$58,800	Very Low (50%) Income Limits (\$)	20,600	23,550	26,500	29,400	31,800	34,150	36,500	38,850
		Extremely Low (30%) Income Limits (\$)*	12,400	15,730	19,790	23,850	27,910	31,970	36,030	38,850*
		Low (80%) Income Limits (\$)	32,950	37,650	42,350	47,050	50,850	54,600	58,350	62,150

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

NOTE: Bexar County is part of the **San Antonio-New Braunfels, TX HUD Metro FMR Area**, so all information presented here applies to all of the **San Antonio-New Braunfels, TX HUD Metro FMR Area**. The **San Antonio-New Braunfels, TX HUD Metro FMR Area** contains the following areas: Bandera County, TX; Bexar County, TX; Comal County, TX; Guadalupe County, TX; and Wilson County, TX.

* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as [established by the Department of Health and Human Services \(HHS\)](#), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low (30%) income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2014 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2014 [Fair Market Rent documentation system](#).

For last year's Median Family Income and Income Limits, please see here:

Select a different county or county equivalent in Texas:

Anderson County
Andrews County
Angelina County
Aransas County
Archer County
Armstrong County
Atascosa County

Select any FY2014 HUD Metropolitan FMR Area's Income Limits:

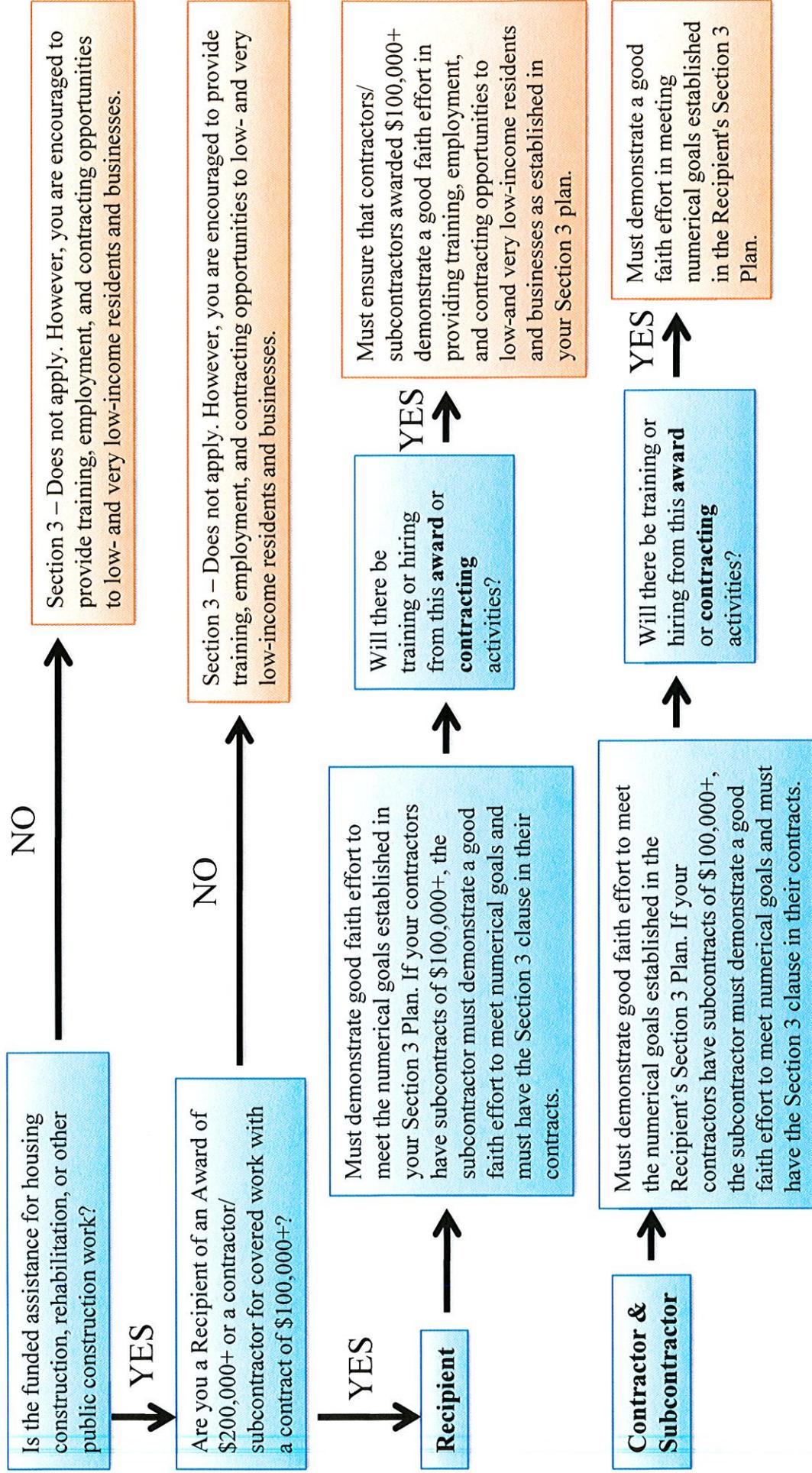
San Antonio-New Braunfels, TX HUD Metro FMR Area

Or press below to start over and select a different state:

Prepared by the [Economic and Market Analysis Division](#), HUD.

Section 3 Flow Chart

Use the following chart to determine if your project is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.



Section 3 requirements apply to the entire project or activity funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered assistance.

Contractor's Guide message:

Message from the Secretary

Construction workers that are employed on many HUD-assisted projects are entitled to prevailing wage rates under the Davis-Bacon and Related Acts. These men and women who work to improve our communities and increase affordable housing in America not only deserve fair compensation — they have a legal right to receive prevailing wage rates. HUD takes seriously its responsibility to ensure that these rights are protected and enforced.

This Contractor's Guide, *Davis-Bacon Labor Standards*, has been designed to support employer compliance and ensure that every contractor who does business with HUD understands how they can uphold their responsibilities. It describes Davis-Bacon wage and reporting requirements and what construction employers must do to meet them. The Guide also explains what construction employers can expect from HUD, and reflects the results of HUD's Davis-Bacon Streamlining Initiative allowing our staff and our customers to focus less on paperwork and more on the people they serve.

I am pleased to offer HUD's partners the most up-to-date information on Davis-Bacon compliance. For any further questions or concerns, I urge you to contact your area's HUD Labor Relations staff who will work to assist you in any way they can.

As always, we welcome your input and thank you for your work supporting affordable housing and sustainable communities for all.

Shaun Donovan



OTM #12 (05/2009)

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

On the Mark!

***On the Mark!** is a special publication series for staff responsible for Federal labor standards administration and enforcement. Its purpose is to share new developments, streamlining tips, and innovations that enhance job performance and results. Any suggestions or comments you may have for **On the Mark!** are welcome. Please contact us by email.*

What's new about Davis-Bacon payroll reporting?

Did you know that employee addresses and full Social Security Numbers are no longer included on payroll reports for Davis-Bacon projects???

The Department of Labor (DOL) published revised regulations concerning the information reported on payrolls for Davis-Bacon – covered projects. The revisions were published on December 19, 2008, and took effect on January 18, 2009, for contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after that date. In other words, the changes are not retroactive and do not affect solicitations, or projects or contracts in effect, prior to January 18, 2009. The revisions were made at 29 CFR §3.3 and §5.5.

Under the new rules, employee addresses and full Social Security Numbers (SSNs) shall not be included on the payroll. Instead, payrolls need to include an individually identifying number for each employee, for example, the last four digits of the employee's SSN. Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for Federal labor standards compliance monitoring.

HUD's Davis-Bacon labor standards forms (e.g., HUD-2554; HUD-4010; HUD-5370 and 5370-EZ) are being revised to reflect these changes.

Please contact the HUD Labor Relations staff for your area if you have any questions about labor standards requirements in HUD programs. A list of the Labor Relations field staff, the jurisdictions they serve, and contact information can be found at our web site by following this link:

www.hud.gov/offices/olr/laborrelstf.cfm.

Start Work Notice

PLEASE RETURN TO THE FOLLOWING ADDRESS:

(Date)

REFERENCE: PROJECT NAME: _____

PROJECT LOCATION: _____
(Street Address)

(City and State)

HUD PROJECT NUMBER: _____

U. S. DEPT. OF LABOR WAGE DECISION NUMBER: _____

This is to inform you that the _____
(Name of Company)

of _____,
(Address) (Town/City)

_____, has started work on the above referenced
(State)
project covered by our contract with you, as of _____
(Date)

Respectfully Yours,

(Name of Company)

(Signature)

(Title)

Notification of start of construction should be submitted by each contractor/subcontractor with the first (initial) payroll. The date of start work should be the first date work is shown on the initial payroll.

All of the above information should be submitted; however, you may use any format you desire in lieu of this form.

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

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

_____ on the
(Contractor or Subcontractor)

_____, that during the payroll period commencing on the
(Building or Work)

_____ day of _____, and ending the _____ day of _____,
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

_____ 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:

(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

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.

PAYROLL DEDUCTION AUTHORIZATION

This is authorization to the _____
(Name of Employee)

_____ to deduct from my paycheck

\$_____ *. This is for item number(s): (circle item number(s)).

REPAYMENT OF:

- 1. Loan
- 2. Retirement
- 3. Advance on Wages
- 4. Savings
- 5. Savings bonds
- 6. Uniforms
- 7. Credit Union
- 8. Profit Sharing
- 9. Donations to Agencies
- 10. Insurance Premiums
- 11. Union Dues
- 12. _____
(Other)

***This deduction is to be made:**

(CHECK APPROPRIATE BOX)

- One time only
- Weekly
- Bi-Weekly
- For _____ weeks
- _____

DATE: _____

EMPLOYEE'S SIGNATURE _____

PRINTED OR TYPED NAME _____

PROJECT NAME _____

HUD PROJECT NUMBER _____

*** TERMINATION OF WORK NOTICE**

Date: _____

REFERENCE: PROJECT NAME: _____

PROJECT LOCATION: _____
(Street Address)

(City & State)

HUD PROJECT NUMBER: _____

U.S. DEPARTMENT OF LABOR WAGE DECISION NUMBER: _____

This is to inform you that the _____
(Name of Company)

of _____,
(Address) (Town/City)

_____, has terminated work on the above referenced
(State)

project covered by our contract with you, as of _____
(Date)

Respectfully Yours,

(Name of Company)

(Signature)

(Title)

* Notification of the termination of work should be submitted by each contractor/subcontractor with the final payroll. The date of work termination should be the last date work is shown on the payroll.

All of the above information should be submitted; however, you may use any format you desire in lieu of this form.

LIST OF USEFUL LABOR RELATIONS WEB SITES

HUD WEHB HOME PAGE

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

HUD REGULATIONS

www.access.gpo.gov/nara/cfr/cfr-table-search.html

HUD OFFICE OF LABOR RELATIONS

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

LABOR RELATIONS LIBRARY

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

LABOR RELATIONS TRAINING AND EMPLOYMENT - STEP-UP

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

HUD HANDBOOKS AND NOTICES IN GENERAL

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

LIMITED DENIAL OF PARTICIPATION IN SPECIFIC HUD PROJECTS

<http://www.hud.gov/offices/enforce/ecldp.cfm>

DOL DAVIS-BACON AND RELATED ACTS HOMEPAGE

<http://www.dol.gov/esa/programs/dbra/index.htm>

DBRA FORMS AND POSTERS

<http://www.dol.gov/esa/programs/dbra/forms.htm>

DOL GENERAL WAGE DETERMINATIONS

<http://www.dol.gov>

PARTIES EXCLUDED FROM PARTICIPATING IN GOVERNMENT CONTRACTS

<http://epls.arnet.gov>

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF LABOR RELATIONS

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE
TO SUPERVISE PAYMENT OF EMPLOYEES

PROJECT NAME: _____ DATE: _____

LOCATION: _____ PROJECT NO: _____

(I) (We) hereby certify that (I am) (we are) (the prime contractor) (a subcontractor) for

(Specify "General Construction," "Plumbing", "Roofing", etc.)

in connection with construction of the above-mentioned project, and that (I) (we) have

appointed * _____

whose signature appears below, to supervise the payment of (my) (our) employees beginning _____, _____; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the so-called Kick-Back Statue which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the

_____ a new certificate appointing some other person for the purpose herein above stated.

* _____
(Identifying Signature of Appointee)

Attest (if required):

(Name of Firm of Corporation)

(Signature) By: _____
(Signature)

(Title) _____
(Title)

=====

NOTE: This certificate must be executed by an authorized officer of a corporation, by a member of a partnership, or the sole owner and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must be accompany the first payroll for which the new appointee executes a statement of compliance required by the Kick-Back Statue.



U.S. Department of Housing
and Urban Development

Labor Relations Desk Guide
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DAVIS-BACON

LABOR STANDARDS

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

*January 2012
Previous versions obsolete*



INTRODUCTION

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

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

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

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

Visit the Office of Labor Relations on-line:

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

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

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CHAPTER 1 LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

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

1-1 DAVIS-BACON AND OTHER LABOR LAWS.

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

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

- b. **The Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts **except** where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

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

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- c. **The Copeland Act (Anti-Kickback Act).** The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.
 - d. **The Fair Labor Standards Act (FLSA).** The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

1-2 DAVIS-BACON REGULATIONS.

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

DOL Regulations are available on-line on the World Wide Web:
http://www.dol.gov/dol/allcfr/Title_29.htm

1-3 CONSTRUCTION CONTRACT PROVISIONS

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

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

administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects, and the HUD-5370, General Conditions of the Contract for Construction or the HUD-5370-EZ (construction contracts ≤\$100,000) which are used for Public and Indian Housing projects.

HUD program labor standards forms are available on-line at:
www.hud.gov/offices/adm/hudclips/index.cfm

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

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

All current Davis-Bacon wage decisions can be accessed on-line at no cost at:
<http://www.wdol.gov>

1-4 RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR

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

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

1-5 RESPONSIBILITY OF THE CONTRACT ADMINISTRATOR.

The **contract administrator** is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals (e.g., the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see 2-1, **The Wage Decision**) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see 2-6, **Compliance Reviews**) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Relations field staff. But many HUD-assisted projects are administered by local contracting agencies such as Public Housing Agencies (PHAs), Indian tribes and tribally-designated housing entities (TDHEs), and States, cities and counties under HUD's Community Development Block Grant (CDBG) and HOME programs. In these cases, the contract administrator will likely be local agency staff. In either case, the guidance for you remains essentially the same.

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

CHAPTER 2 HOW TO COMPLY WITH LABOR STANDARDS AND PAYROLL REPORTING REQUIREMENTS

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

SECTION I - THE BASICS

2-1 **THE WAGE DECISION.**

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

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

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

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

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

The Employee Rights under the Davis-Bacon Act poster (WH-1321) replaces the Notice to all Employees. The new poster is available in English and Spanish on-line at HUDClips (see address in the Appendix).

2-2 **ADDITIONAL "TRADE" CLASSIFICATIONS AND WAGE RATES.**

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

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

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- b. **Making the request.** A request for additional classification and wage rate must be made in writing through the contract administrator. (If the contract administrator is a local agency, the agency will send the request to the HUD Labor Relations staff.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.
- c. **HUD review.** The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/referral letter to the DOL.

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

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

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

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

2-3 **CERTIFIED PAYROLL REPORTS.**

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

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

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

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

DOL's website has Payroll Instructions and the Payroll form WH-347 in a "fillable" PDF format at this address:
www.dol.gov/whd/forms/wh347.pdf

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

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

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

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

- e. **Payroll retention.** Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.
- f. **Payroll inspection.** In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or from DOL.

2-4 **DAVIS-BACON DEFINITIONS.**

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

- a. **Laborer or mechanic.** “Laborers” and “mechanics” mean anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, sheet metal workers, etc.), apprentices, and trainees and, for CWHSSA purposes, watchmen and guards. “Laborers” and “mechanics” are the two groups of workers that must be paid not less than Davis-Bacon wage rates.
1. **Working foremen.** Foremen or supervisors that regularly spend more than 20% of their time performing construction work and do not meet the exclusions in paragraph 2 below are covered “laborers” and “mechanics” for labor standards purposes for the time spent performing construction work.
 2. **Exclusions.** People whose duties are primarily administrative, executive or clerical are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc. (Contact the contract administrator if you have any questions about whether a particular employee is excluded.)

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

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

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

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

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

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- d. **Prevailing wages or wage rates.** Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless you provide bona fide fringe benefits for your employees.
1. **Piece-work.** Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. For example, a Drywall Hanger's earnings may be calculated based upon the square feet of sheetrock actually hung, a Painter's earnings may be based upon the number of units painted. Employers may calculate weekly earnings based upon piece rates provided the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. Accurate time records must be maintained for any piece-work employees. If the weekly piece rate earnings are not sufficient, the employer must recompute weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.
- e. **Fringe benefits** Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

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

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

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

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

- h. **Proper designation of trade.** You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters even if they aren't considered by you to be fully trained as a Carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.
1. **Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each classification in which work was performed only if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.
- i. **Site of work.** The “site of work” is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. “Site of work” can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

SECTION II - REPORTING REQUIREMENTS

2-5 COMPLETING A PAYROLL REPORT.

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

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

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

- a. **Project and contractor/subcontractor information.** Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the week dates in the spaces provided. Numbering payrolls is optional but strongly recommended.
- b. **Employee information.** Effective January 18, 2009, payrolls shall not report employee addresses or full Social Security Numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor's records. DOL has modified form WH-347, Payroll, to accommodate these reporting requirements.

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

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1. **Apprentices or trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.
 2. **Split classifications.** For an employee that worked in a split classification, make a separate entry for each classification of work performed distributing the hours of work to each classification, accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
- d. **Hours worked.** The payroll should show ONLY the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for all projects. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.
- e. **Rate of pay.** Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you do not participate in approved fringe benefit programs, add the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.
1. **Piece-work.** For any piece-work employees, the employer must compute an effective hourly rate for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.

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

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

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

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

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

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

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

- j. **Signature.** Make sure the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Signatures in pencil; signature stamps; xerox, pdf and other facsimiles are not acceptable.

SECTION III - PAYROLL REVIEWS AND CORRECTIONS

2-6 COMPLIANCE REVIEWS.

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. The DOL may also independently conduct its own reviews (see 1-5). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

- a. **On-site interviews.** Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative, or HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator.
- b. **Project payroll reviews.** The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

2-7 TYPICAL PAYROLL ERRORS AND REQUIRED CORRECTIONS.

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

- a. **Inadequate payroll information.** If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate, e.g., does not contain all of the necessary information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.
- b. **Missing identification numbers.** If the first payroll on which an employee appears does not contain the employee's individually identifying number, the employer will be asked to supply the missing information. This information can be reported on the next payroll submitted by the employer if the employer is still working on the project. Otherwise, the employer will be asked to submit a correction certified payroll.

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- c. **Incomplete payrolls.** If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a correction certified payroll.
- d. **Classifications.** If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision or the employer may request an additional classification and wage rate (see 2-2). If reclassification results in underpayment (i.e., the wage rate reported on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees. (see 2-8 for instructions about wage restitution.)
- e. **Wage rates.** If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.
- f. **Apprentices and trainees.** If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.
- g. **Overtime.** If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:
1. If the project is subject to CWHSSA overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project. The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,
 2. If the project is not subject to CWHSSA, the employer will be notified of the possible FLSA overtime violations. Also, the contract administrator may refer the matter to the DOL for further review.
- h. **Computations.** If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.
- i. **Deductions.** If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

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

- j. **Fringe benefits.** If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the Statement of Compliance], the employer may be asked to submit correction certified payrolls and will be required to pay wage restitution if underpayments occurred. However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.
- k. **Signature.** If the payroll Statement of Compliance is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principle of the firm and that person has not been authorized by principle to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature of a principle or other authorized signatory.
- l. **On-site interview comparisons.** If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a correction certified payroll report.
- m. **Correction certified payroll.** Any and all changes to data on a submitted payroll report must be reported on a certified correction payroll. In no case will a payroll report be returned to the prime contractor or employer for revision.

2-8 **RESTITUTION FOR UNDERPAYMENT OF WAGES.**

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

- a. **Notification** to the Employer/Prime contractor. The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

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

- b. **Computing wage restitution.** Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.
- c. **Correction certified payrolls.** The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for wage restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount actually paid. A properly signed Statement of Compliance must accompany the correction payroll.

HUD no longer requires the signature of the employee on the correction payroll to evidence employee receipt of restitution payment. In addition, except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashiers, canceled or other), or employee-signed receipts or waivers.

- d. **Review of correction CPR.** The contract administrator will review the correction certified payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a correction certified payroll within 30 days.
- e. **Unfound workers.** Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers) providing their names, Social Security Numbers, last known addresses and the gross amount due. In such cases, at the end of the project the prime contractor will be required

to place in a deposit or escrow account an amount equal to the total gross amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for 3 years after the completion of the project. After 3 years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD.

CHAPTER 3 LABOR STANDARDS DISPUTES, ADMINISTRATIVE REVIEWS, WITHHOLDING, DEPOSITS AND ESCROW ACCOUNTS, AND SANCTIONS

WHAT HAPPENS WHEN THINGS GO WRONG?

3-1 INTRODUCTION.

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

3-2 ADMINISTRATIVE REVIEW ON LABOR STANDARDS DISPUTES.

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

- a. **Additional classifications and wage rates.** Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.
 1. **Reconsideration.** The DOL normally identifies the reasons for denial in its response to the request. Any interested person (for example, the contract administrator, employer, representatives of the employees) may request reconsideration of the decision on the additional classification request. The request for reconsideration must be made in writing and must thoroughly address the denial reasons identified by the DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to the DOL. (See 2-2(d), and also DOL Regulations 29 CFR 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through the HUD Headquarters Office of Labor Relations.

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

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

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

1. **DOL review.** The DOL will review the contract administrator's report and the arguments against the findings presented in the hearing request. The DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by the DOL of the results of its review. If DOL concludes that violations have occurred, you will be given an opportunity to correct any underpayments or to request a hearing before a DOL Administrative Law Judge (ALJ). (See DOL Regulations 29 CFR 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings.)

2. **Administrative Review Board.** Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

3-3 WITHHOLDING.

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

3-4 **DEPOSITS AND ESCROWS.**

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

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See 1-4, Responsibility of the Principal Contractor, and 2-8, Restitution for Underpayment of Wages.

- a. **Where the parties have agreed to amounts of wage restitution that are due** but the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages, e.g., some of the workers have moved and could not be located. The amount of the deposit is equal to the total gross amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who cannot be located are held in the deposit/escrow account for three years and disposed as described in 2-8(f) of this Guide.
- b. **Where underpayments are suspected or alleged and an investigation has not yet been completed.** The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor.

If the parties agree to the investigative findings, the amounts due to the workers will be paid by the employer. As these workers are paid and proper documentation is provided to the contract administrator, the gross amounts corresponding to the documented payments are returned to the depositor.

1. If the employer is unable to make the payments to the workers, e.g., lacks the funds necessary, the contract administrator may make disbursements directly to the workers in the net amounts calculated by the employer. The amounts withheld from the workers for tax deduction will be returned to the employer as payments to workers are made. The employer shall be responsible for reporting and transmitting withholdings to the appropriate agencies.

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2. If the employer is not cooperating in the resolution, the contract administrator shall make disbursements to the workers in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (See 2-8(f) and 3-4(a)).

If the parties do not agree and an administrative hearing is requested, the escrow will be maintained as explained in 3-4(c), below.

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

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

3-5 ADMINISTRATIVE SANCTIONS.

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

- a. **DOL debarment.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (debarred) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or can be initiated by the DOL. Debarment proceedings are described in DOL regulations 29 CFR 5.12.
- b. **HUD sanctions.** HUD sanctions may include Limited Denials of Participation (LDPs), debarments and suspensions.
 1. **Limited Denial of Participation.** HUD may issue to the employer a limited denial of participation (LDP) which prohibits the employer from further participation in HUD programs for a period up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDP's are found at 24 CFR 24.700-24.714.

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

3-6 FALSIFICATION OF CERTIFIED PAYROLL REPORTS.

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

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

ACRONYMS AND SYMBOLS

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

DAVIS-BACON - RELATED WEB SITES*

HUD Office of Labor Relations:
www.hud.gov/offices/olr

HUD Regulations:
<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

HUDClips (HUD Forms and Publications):
www.hud.gov/offices/adm/hudclips/index.cfm

DOL Davis-Bacon and Related Acts Homepage:
<http://www.dol.gov/whd/contracts/dbra.htm>

DOL Regulations:
<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Davis-Bacon Wage Decisions:
www.wdol.gov

DOL Forms:
www.dol.gov/whd/programs/dbra/forms.htm

***Web addresses active as of January 2012**

Project Wage Rate Sheet	U.S. Department of Housing and Urban Development Office of Labor Relations	
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Project Name:	Wage Decision Number/Modification Number:
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Project Number:	Project County:
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Work Classification	Basic Hourly Rate (BHR)	Fringe Benefits	Total Hourly Wage Rate	Laborers Fringe Benefits		\$
				Group #	BHR	
Bricklayers			\$	Group #	BHR	Total Wage
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	Operators Fringe Benefits:		\$
Plumbers			\$	Group #	BHR	Total Wage
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Workers			\$			\$
Tapers			\$			\$
Tile Setters			\$	Truck Drivers Fringe Benefits:		\$
Other Classifications				Group #	BHR	Total Wage
			\$			
			\$			
			\$			

Additional Classifications (HUD Form 4230-A)

Work Classification	Basic Hourly Rate (BHR)	Fringe Benefits	Total Hourly Wage Rate	Date of HUD Submission to DOL	Date of DOL Approval
			\$		
			\$		
			\$		

Date _____

I, _____ (Name of Signatory Party) _____ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ (Contractor or Subcontractor) _____ on the _____ (Building or Work) _____; that during the payroll period commencing on the _____ day of _____, and ending the _____ day of _____, 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 _____ (Contractor or Subcontractor) _____ from the full

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:

(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	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

U.S. Department of Housing and Urban Development
Office of Departmental Operations and Coordination
Washington, DC 20410

Email: www.OfficeofLaborRelations@hud.gov

**Labor Relations Desk Guide
LR01.DG**



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:

Bexar County Department of Community Resources
Community, Development and Housing Division
Attention: Jaime E. Contreras, Senior Project Analyst
233 North Pecos, Suite 350
San Antonio, Texas 78207

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

FEDERAL COMPLIANCE MANUAL

INSERT WAGE RATE DOCUMENT (web retrieval)

DAVIS-BACON AND RELATED ACTS:
CHECKLIST FOR
ENFORCING DAVIS-BACON LABOR REQUIREMENTS

Planning the Project:

1. Determine if Davis-Bacon or Related Acts apply, given project and funding source.

NOTE: Prior to the start of the project during the contract negotiations or at the contract's execution date, the best and safest approach to ensuring compliance is to hold a preliminary orientation meeting of the project sub-grantee/sub-recipient/project provider; project monitor.

2. Determine the proper wage determination: Building, Residential, Heavy, or Highway.
3. Obtain the Davis-Bacon wage decision and labor standards contract provisions applicable to the project and include them in the bid specifications. Include language in the bid documents that the contract is covered by Federal Davis-Bacon wage requirements and that not less than the prevailing wage rate be paid to workers at the construction site, as set forth in the included wage determination.

The Davis Bacon Wage decision or wage determination is a listing of various construction work job classifications such as carpenter, electrician, plumber, etc. and the minimum wage rates and fringe benefits that people performing work in those classifications must be paid. Wage decisions are established for various types of construction categories (e.g., residential, building, heavy, highway) and apply to specific geographic areas.

4. Ten (10) days before the bid opening check to see if decision is still current by checking the Website or calling HUD Labor Relations staff.
 - If no change occurred, document this to the file.
 - If a change occurred, determine if sufficient time exists to notify all bidders.
5. Determine if a modification affects your project activities, and, if so, send out notice to bidders.
6. Verify eligibility of principal contractor through the Federal Debarment Listing.
7. Award contract. Each contract subject to Davis-Bacon requirements must include the wage decision, Form HUD 4010, and the appropriate HUD contract provisions containing the labor standards clause.
8. If construction has not started within 90 days of award, new wage decision is required.

Building the Project:

1. Pre-construction meeting (required). Hold a pre-construction conference.

Hold a preconstruction meeting/conference to be attended by: CDBG/HOME Division, Project contractor, subcontractors, Project Engineers/Architects. At meeting provide the necessary labor provisions, identify responsibilities, and obtains the proper wage decisions for all classifications on the job and disseminates information.

- Project Engineer/Architect provides the minutes of the meeting for the file.

2. Routine Monitoring

- Review Weekly Certified Payroll Records (includes ensuring that proper classifications are used).
- Conduct On-site interviews.
- Investigate anything that indicates a possible violation.
Note: Contractor must resolve discrepancies.
- Prepare Semi-Annual Labor Standards Enforcement Report Form.

DAVIS-BACON AND RELATED ACTS: Additional Resources

Wage Determinations:

<http://www.access.gpo.gov/davisbacon>

Federal Debarment Listing:

<http://epls.arnet.gov>

Department of Labor:

<http://www.dol.gov>

HUD:

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

HUD Publications:

Labor Relations Desk Guide- LR01.DG-

Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects

Labor Relations Desk Guide- LR04.DG

Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies

HUD Forms:

http://www.hudclips.org/sub_nonhud/html/forms.htm

Federal Regulations:

1. CDBG- Housing and Community Development Act of 1974
2. HOME- National Affordable Housing Act of 1990
3. U.S. Housing Act of 1937
4. National Housing Act of 1949

DAVIS-BACON AND RELATED ACTS: Responsibilities

Responsibilities: The contractors/subcontractors, organization, and the funding entity each have distinct and separate responsibilities for compliance to Davis-Bacon.

- A. **Contractors/Subcontractors:** (Any entity involved in construction of project)
1. Prepare bid proposal using appropriate Davis-Bacon wages/classifications, when applicable.
 2. Comply with labor standards and requirements throughout duration of project.
 3. Contractor responsible for submitting weekly certified payroll reports to Bexar County. Subcontractors submit to prime contractor.
 4. On the job site, post a copy of the wage decision and DOL poster, *Notice to Employees*.
 5. Maintain set of payroll and other basic records for at least 5 years after project completion.
- B. **Funded Agency/Organization:** (Subrecipient)
1. Prepare bid package/solicitation using requiring contractor compliance to Federal Labor Standards and Davis-Bacon.
 2. Include Federal Labor provisions in contract, including the wage decision and HUD Form 4010.
 3. Conduct a pre-construction conference with appropriate parties and personnel.
 4. Establish files for each contractor and document activities.
 5. Review weekly certified payroll reports and submit to Bexar County.
 6. Maintain project files for at least 5 years after project completion.
 7. As necessary, investigate and report any violations and take appropriate corrective actions.
- C. **Funding Entity:** (CDBG & HOME Division)
- The funding entity has the same responsibilities as the funded organization, and is ultimately responsible for compliance of Federal Labor Standards and Davis-Bacon. In addition:
1. Verify that vendors, contractors and subcontractors are not listed on the Federal debarment listing.
 2. Provide wage determinations, HUD Form 4010, and DOL poster and disseminate to subrecipient and contractors.
 3. Provide copies of reporting tools.
 4. Maintain files for a minimum of 5 years.
 5. As required, report labor violations and corrective actions to HUD.

DAVIS-BACON AND RELATED ACTS: Purpose and Applicability

Purpose: Provides local laborers and contractors a fair opportunity to compete and participate in building programs that are wholly or partially funded by the Federal government. Protects local wage standards by preventing contractors from basing their bids on wages lower than the prevailing wages in the area.

The Davis-Bacon Act is one of the Federal Labor Standards that is applied to federally funded or assisted projects. Federal Labor Standards ensure:

1. Workers are paid no less than the area's local prevailing wages for similar kinds of work.
2. Workers receive premium pay for overtime hours worked.
3. Wages are paid at least once per week.
4. Unauthorized deductions from a worker's pay is prohibited.

Applicability to HUD Programs:

Community Development Block Grant (CDBG); Housing and Community Development Act of 1974 as amended, Section 110; HUD Regulation 24 CFR 570.603:

Davis-Bacon requirements are applicable when CDBG funds are used in whole or in part to finance construction work. **Applicability is triggered if CDBG funds pay for any direct costs of construction and when one of the following thresholds are met:**

- Residential: Davis Bacon and Related Acts (DBRA) apply to residential properties only if the properties contain 8 or more units. Single – family homeownership units are usually not covered, because each unit is viewed as a single residential property containing one unit.
- **Non-residential: any construction work financed valued over \$2,000 and financed with CDBG funds.**
- Clearance of land or site improvements.

HOME Investment Partnerships Program (HOME); National Affordable Housing Act of 1990, Section 286 (a); HUD regulation 24 CFR 92.354:

Residential: Construction contracts, which contain 12 or more “assisted units,” are covered by prevailing wage requirement. Davis-Bacon requirements are applicable when HOME funds are used for ANY eligible project costs, including construction and non-construction costs (direct and indirect), so long as the contract for construction contains 12 or more HOME-assisted units.

Homeownership: If a pre-construction agreement is made with the owner/developer of a housing project that HOME funds will be used to assist homebuyers with buying the housing, and the construction contract covers 12 or more HOME-assisted units, Davis-Bacon Labor Standards apply.

If both CDBG and HOME are involved in a residential project, the lower CDBG threshold would apply.

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 I(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;

(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

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.

Request for Taxpayer Identification Number and Certification

**Give form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

Other entities. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.