

NEBRASKA

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DEPT. OF ECONOMIC DEVELOPMENT

Davis-Bacon Act Policies and Procedures

State of Nebraska CDBG-DR Program

JANUARY 2022

RECORD OF CHANGES

The following table summarizes amendments to the Davis-Bacon Policies and Procedures (P&P).

| Date Change Approved | Change Number | Description of Change |
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1 POLICY OVERVIEW

The State of Nebraska's Department of Economic Development (DED) is responsible for ensuring compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (CWHSSA), Fair Labor Standards Act (FLSA), and the Copeland (Anti-Kickback) Act, as well as Related Acts imposing Davis-Bacon wage and reporting requirements (i.e., Davis-Bacon and Related Acts or DBRA), across all construction contractors and subcontractors performing construction, alteration, or repair (including painting or decorating) of public buildings or public works for federally funded or assisted contracts using Community Development Block Grant – Disaster Recovery (CDBG-DR) funds.

Pursuant to Federal and State regulations, this P&P addresses Subrecipient and Successful Applicant responsibilities for ensuring compliance with labor regulations, including:

- Bidding and contract requirements to comply with the United States (US) Department of Housing and Urban Development (HUD) standards;
- Enforcement of DBRA, CWHSSA, FLSA, and the Copeland Act's requirements during project implementation;
- Restitution for underpayment of wages and non-compliance with DBRA; and
- Documentation and reporting processes to demonstrate compliance.

The State of Nebraska enforces conduct of the CDBG-DR program to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, or marital status.

1.1 ASSOCIATED ALLOCATION(S)

- Winter Storm Ulmer ([DR-4420](#))
 - In early 2019, the State of Nebraska suffered record-breaking damage from severe winter weather, straight-line winds, and its worst flooding event in 50 years, leading to a federal major disaster declaration (DR-4420) under the Stafford Act. Damage from DR-4420 was widespread, leading to disaster declarations in 84 of the State's 93 counties (and four [4] tribal areas), with the worst damage located in the eastern part of the state.
 - HUD Most Impacted and Distressed (MID) is detailed in the Action Plan and includes Dodge, Douglas, and Sarpy counties.
 - A minimum of 80% of this allocation must be invested in HUD-defined MID areas.
 - A minimum of 70% of total CDBG-DR program funds must be spent on Low- to Moderate Income (LMI) populations.

This subsection may be updated should other allocations become available due to subsequent disaster events or supplemental allocations.

2 ACRONYMS

| Acronym | Meaning |
|---------|---|
| CDBG-DR | Community Development Block Grant – Disaster Recovery |
| CFR | Code of Federal Regulations |
| CPR | Certified Payroll Report |
| CWHSSA | Contract Work Hours and Safety Standards Act |
| DBRA | Davis-Bacon and Related Acts |
| DED | Nebraska Department of Economic Development |
| DOL | Department of Labor |
| FLSA | Fair Labor Standards Act |
| FR | Federal Register |
| HCDA | Housing and Community Development Act of 1974 |
| HUB | Historically Underutilized Business |
| HUD | Department of Housing and Urban Development |
| IFB | Invitation for Bids |
| LSCO | Labor Standards Compliance Officer |
| LSO | Labor Standards Officer |
| P&P | Policy and Procedure |
| PO | Purchase Order |
| QPR | Quarterly Performance Report |
| PW | Prevailing Wage |
| RAP | Registered Apprenticeship Program |
| RFP | Request for Proposal |
| SOW | Statement of Work |
| SRA | Subrecipient Agreement |

| Acronym | Meaning |
|---------|--------------------|
| US | United States |
| USC | United States Code |

3 DEFINITIONS

Controlling definitions are found in the **CDBG-DR Program Definitions**. Key definitions specifically relating to this P&P are stated below.

Apprentice: A person employed and individually registered in a bona fide apprenticeship program, including Step-Up apprenticeship programs designed for Davis-Bacon construction work.¹

Construction, Prosecution, Completion, or Repair: All types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.²

Employed: Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the US is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.³

Force Account Labor: Labor employed directly by the Grantee (i.e., DED) or Subrecipient on either a permanent or temporary basis. The workforce can be external (employees hired in the private market) or internal (currently employed maintenance or other staff). In essence, the hiring entity obtains the materials and equipment needed and directly employs workers to undertake the improvement acting as its own general contractor.

Labor Standards Compliance Officer (LSCO): The LSCO is a DED managed position that is responsible for tracking records and monitoring compliance of Subrecipients and Successful Applicants with the requirements described in this P&P.

¹ “Davis-Bacon Compliance Principles and Reporting Requirements” Handbook 1344.1 Rev 2 (c). See <https://www.hud.gov/sites/documents/13441C4SECH.PDF>.

² 29 CFR § 3.2(b).

³ 29 CFR § 5.2(o).

Labor Standards Officer (LSO): The LSO is a Subrecipient or Successful Applicant managed position that is responsible for the regulatory administration and enforcement of the Federal labor standards provisions on all SRAs and funding agreements covered by DBRA requirements.

Laborer or Mechanic: Includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the CWHSSA, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.⁴

Prevailing Wages: The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.⁵

Public Building or Public Work: Building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.⁶

Successful Applicant: Successful Applicants include any eligible entity that is selected to enter into a funding agreement with DED to implement CDBG-DR program activities (e.g., for-profit developers).

Trainee: A person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the DOL, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.⁷

4 SCOPE

These policies and procedures apply to all DED employees, providers, vendors, contractors, consultants, Subrecipients, partners, citizens, Successful Applicants, external departments, and agencies doing business with DED, as well as beneficiaries and others associated with, working for, accessing, or attempting to access benefits under the CDBG-DR programs.

⁴ 29 CFR § 5.2(m).

⁵ The Davis-Bacon Act, as Amended (April 2009). PL 107-217-Section 3142(b).

⁶ 29 CFR § 3.2(c).

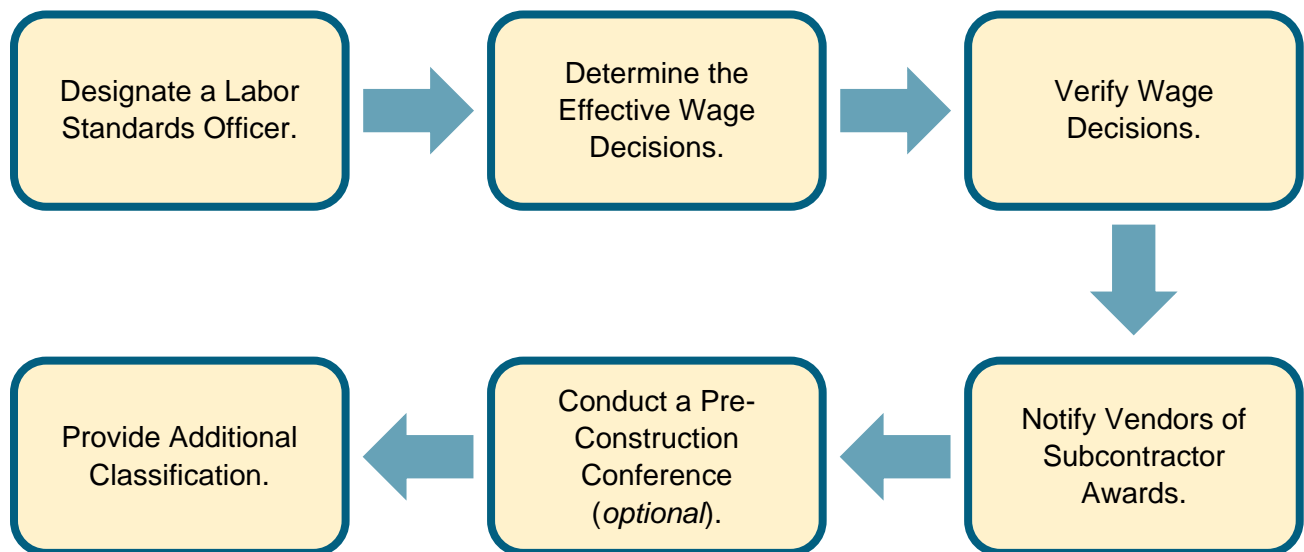
⁷ 29 CFR § 5.2(n).

5 DAVIS-BACON ACT POLICY

5.1 OVERVIEW

The Davis-Bacon Act (40 USC 3141, et seq., as implemented by 29 CFR Part 5) provides that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with Federal funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. An overview of the steps for Subrecipients and Successful Applicants to carry out Davis-Bacon requirements is provided in **Figure 1**.

Figure 1: Davis-Bacon Compliance Overview



Section 110 of the Housing and Community Development Act of 1974 (HCDA) applies the Davis-Bacon Act to components of the CDBG program, including CDBG-DR, and, as a result, the HCDA is a “Related Act” for purposes of the Davis-Bacon Act. To determine if Davis-Bacon is applicable to a specific project activity, see **Appendix A: Davis-Bacon Project Applicability Cheat Sheet**.

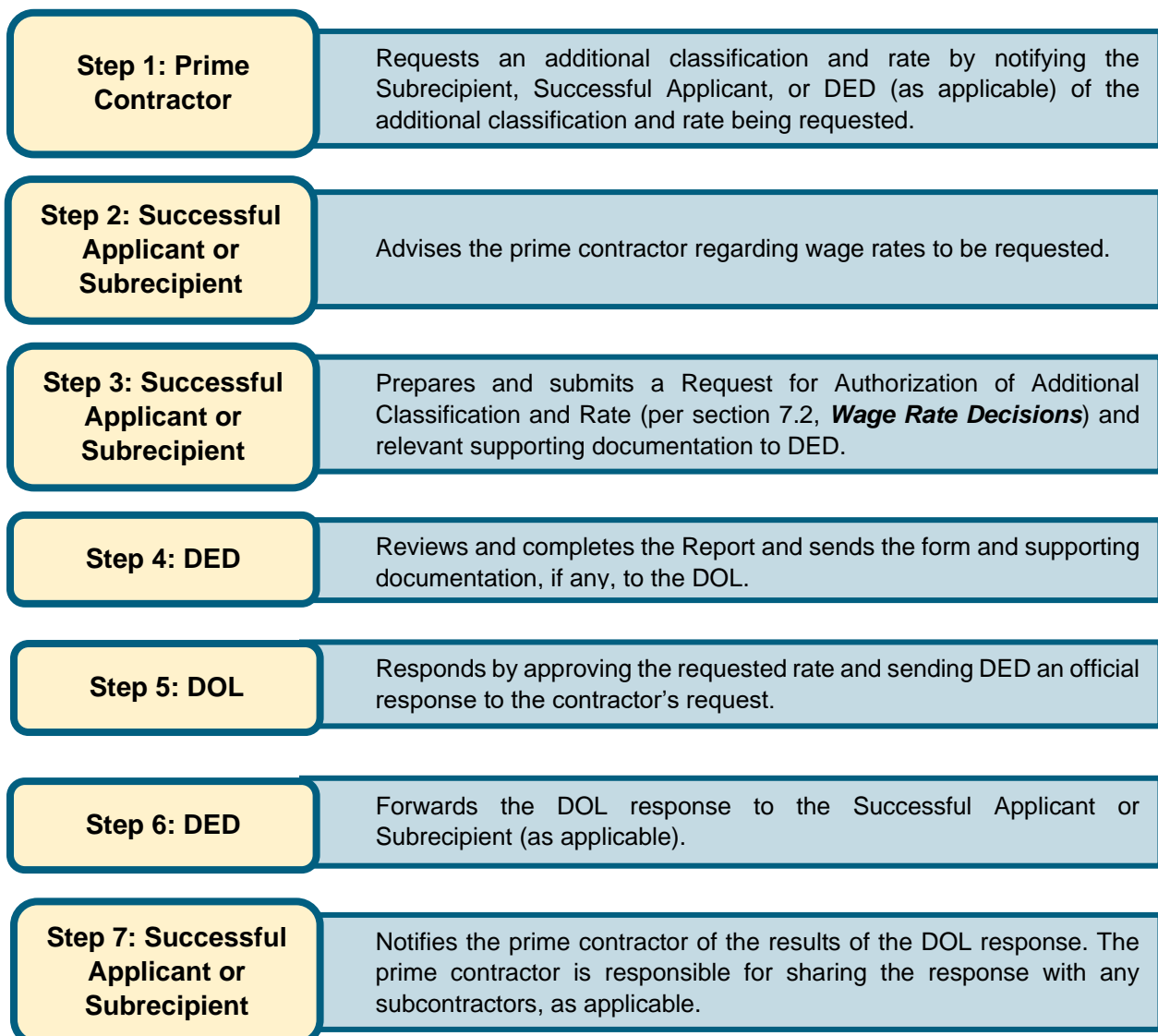
Construction contracts in excess of \$2,000 awarded by DED under the CDBG-DR program shall include a provision for compliance with Davis-Bacon and associated DOL and HUD regulations. The principal requirements are:

- Subrecipients and Successful Applicants must include a copy of the current Prevailing Wage (PW) rate decision in each Invitation For Bid (IFB), Request For Proposal (RFP), and Purchase Order (PO) when applicable;
- Subrecipients and Successful Applicants may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis and who will comply with other labor standards;

- Contractors must pay laborers the wage rate that DOL determines is the PW in that labor market;
- Contractors must submit weekly payrolls; and
- Subrecipients and Successful Applicants are required to report all suspected, reported, or confirmed violations to DED.

A wage decision will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If a worker(s) will be employed to work on the project but is part of a particular class of laborers that is not listed in the wage decision, the contractor must request an additional classification. The steps to complete an additional classification are summarized below in Figure 2 (see also section 7.2, **Wage Rate Decisions**).

Figure 2: Steps to Complete an Additional Classification



HUD has published a contractor's guide to PW requirements for federally assisted construction projects. Subrecipients and Successful Applicants may use this "Making Davis-Bacon Work" guidebook to obtain a better understanding of Davis-Bacon laws and regulations and to determine how to comply with these laws and regulations.⁸

All Subrecipients and Successful Applicants must follow HUD and DOL reporting requirements. DED will monitor and enforce completion of the following reports:

- Weekly Statement of Compliance (a.k.a. a Certified Payroll Report [CPR]) that certifies compliance with DBRA requirements (see Optional Form WH-347);
- Report of any violations that occurred that week; and
- Reports must be kept by each contractor or subcontractor for at least three (3) years.

HUD also requires quarterly performance reports (QPRs) from DED in addition to the CPRs that Subrecipients and Successful Applicants send to DOL via DED. DED will use information generated from standard quarterly program reporting generated by Subrecipients and Successful Applicants to complete QPRs to HUD (for further details, see ***Monitoring and Compliance Plan***).

5.2 IMPLEMENTING AUTHORITIES

DED will have an established Labor Standards Compliance Officer (LSCO) to manage monitoring and compliance for all Subrecipients and Successful Applicants funded through the CDBG-DR program. Subrecipients and Successful Applicants are required to appoint and maintain a Labor Standards Officer (LSO) for all SRAs and funding agreements involving construction activities.

LSOs are appointed using the DED Appointment of Labor Standards Officer Designation Form (see ***Appendix B: Appointment of Labor Standards Officer Form Template***) as submitted to DED. The LSO may be an employee of a Subrecipient or Successful Applicant or may be a third party retained for the purpose. The primary qualification of an LSO is an understanding of HUD's overall compliance requirements with the Federal PW obligations applicable to HUD-funded CDBG programs and regular attendance at HUD and DOL trainings.

The LSOs are responsible for the regulatory administration and enforcement of the Federal labor standards provisions on all SRAs and funding agreements covered by DBRA requirements. These activities will be conducted with support from DED's LSCO.

⁸ The guidebook is located at: <https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors-guide-prevailing-wage-requirements/>.

5.3 ADDITIONAL FEDERAL REQUIREMENTS

This P&P is structured to ensure compliance with Federal wage and labor relations statutes and regulations applicable to Grantees (i.e., DED), Subrecipients, and Successful Applicants of CDBG-DR funds, including the following:

- Davis-Bacon and Related Acts, as described above in section 5.1, **Overview**;
- The Copeland Act (18 USC 874 and 40 USC 3145, as implemented in 29 CFR Part 3) “applies to any contract which is subject to Federal wage standards” to ensure that any person working on a federally funded or assisted construction project is not forced to “give up any part of compensation to which he is entitled under his employment contract.”⁹
- The CWHSSA (40 USC 3701 et seq., as implemented in 29 CFR Part 5) requires that contracting officers ensure compliance of “any contract in an amount in excess of \$100,000 and subject to the overtime provisions,” including associated requirements including liability for unpaid wages, withholding for unpaid wages and liquidated damages, and the applicability of such rules to subcontracts.¹⁰
- The FLSA (29 USC § 201) establishes standards for employment and employee pay by business organizations and is especially applicable to construction activities. A business in the construction industry must have two (2) or more employees and have an annual gross sales volume of \$500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between the states (“interstate commerce”).¹¹

Exceptions to DBRA, CWHSSA, FLSA, and the Copeland Act include:¹²

- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into individual contracts below \$2,000 in order to circumvent Federal requirements is not permitted;
- Rehabilitation or construction of residential properties containing seven (7) or fewer units (single-family homeowner properties are typically excluded from DBRA compliance requirements);

⁹ 29 FR 97.

¹⁰ 48 FR 19540.

¹¹ Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

¹² HUD, 2013. “HUD Handbook 1344.1, Federal Labor Standards Requirements in Housing and Urban Development Programs.” See <https://www.hud.gov/sites/dfiles/OCHCO/documents/Work-Schedule-Request.pdf>.

- If the residential property has eight (8) or more units, DBRA compliance may be applicable. For example:
 - Five (5) side-by-side townhouses consisting of two (2) units each.
 - Three (3) apartment buildings each with five (5) units located on one (1) tract.
 - Eight (8) single-family (not homeownership) houses located on contiguous lots.
- Simple water and sewer line extensions without pumps, tanks, etc.;
- Contracts solely for demolition when no federally funded construction is anticipated on the site; and
- Wage requirements shall not apply to any individual who:
 - Performs services for which the individual volunteered;
 - Does not receive compensation for such services;
 - Is paid expenses, reasonable benefits, or a nominal fee for such services; or
 - Is not otherwise employed at any time in the construction work.

All construction contractors (including CDBG-DR-funded construction contracts where special conditions or permits apply due to the specific project description or location) are required to comply with DBRA.

6 ROLES AND RESPONSIBILITIES

6.1 DED

As the Grantee, DED is responsible for overseeing and monitoring Subrecipients and Successful Applicants for compliance with DBRA and submitting QPRs to HUD through DRGR. DED will require Subrecipients and Successful Applicants using CDBG-DR funds to adopt these policies and procedures and to include labor standards and wage determination clauses in all construction contracts subject to labor standard provisions. DED shall establish an LSCO to manage monitoring and compliance for all Subrecipients and Successful Applicants.

The LSCO acts as DED's liaison for possible labor standard and compliance issues and completes the following, but not limited to, activities:

- Confirming the specific labor standards provisions applicable to the project (e.g., Davis-Bacon wage and reporting requirements, CWHSSA, Copeland Act, FLSA) and communicating such requirements to Subrecipients and Successful Applicants;

- Processing additional classification requests and reconsidering them when necessary, as described in section 5.1, **Overview**, and section 7.2.3, **Additional Classification Request Process**;
- Documenting the wage decision before the award of the contract using the CDBG-DR Implementation Manual for verification and maintaining the form in DED's labor files;
- Receiving notification from the Subrecipient or Successful Applicant before a contractor begins to work on a project;
- Signing off on contractor clearance;
- Creating and submitting the semi-annual report;
- Maintaining contact with HUD's Regional Labor Enforcement as necessary to determine assistance or support on decisions;
- Providing training and technical assistance to Subrecipient and Successful Applicant LSOs;
- Maintaining P&P such as the current document, forms, and records that demonstrate Subrecipients, Successful Applicants, and contractors are informed or have been provided technical assistance regarding labor standards;
- Ensuring compliance with requirements by performing periodic "spot-check" reviews of certified payroll submissions and related submissions, including comparison of on-site interview data against CPRs for compliance with the labor standards and requesting additional information when needed or rejecting submitted payrolls as needed;
- Enforcing the referral of potential criminal/complex investigations, debarment, or CWHSSA liquidated damages to HUD by providing HUD with a summary of the findings, schedule of back wages due, issued notices to the contractor, and notice of intent to assess liquidated damages and implementing the final order of liquidated damages;
- Receiving and transmitting labor standard enforcement reports ("Enforcement Reports") from Subrecipients and Successful Applicants to provide to DOL;
- Identifying potential willful violations through spot-check reviews or employee interviews and following up on potential willful violations through employee questionnaires and other techniques to identify cases for investigation; and
- Enforcing corrective actions for identified errors including, but not limited to:
 - Misclassification of laborers and mechanics;
 - If the actual pay is less than full PW, including fringe benefits for all hours worked (including overtime);
 - Copy or Fax Statement of Compliance (a.k.a. CPR);

- Inadequate recordkeeping, such as not counting all hours worked by an individual or not recording hours worked in two (2) or more classifications in one (1) day;
- Incomplete Payroll Information;
- Failure to submit weekly payrolls – including for weeks of no work;¹³
- One (1) Statement of Compliance (a.k.a. CPR) for multiple work weeks;
- Other deduction authorizations not completed;
- Unauthorized signature on Statement of Compliance (a.k.a. CPR); and
- Apprenticeships or trainees not properly documented.

The LSCO will also oversee the LSOs and support communications between Subrecipient or Successful Applicant LSOs and HUD, DOL, or other Federal agencies.

6.2 SUBRECIPIENTS AND SUCCESSFUL APPLICANTS

Each Subrecipient or Successful Applicant shall designate an LSO responsible for tracking records and monitoring compliance with the requirements described in this P&P. The activities to be completed by the LSO include, but are not limited to, the following:

- Ensuring that the current applicable Davis-Bacon wage decision and contract standards are incorporated into the contract for construction (e.g., construction specifications);
- Searching the SAM website¹⁴ no more than 10 days prior to a bid opening to ensure that the wage decision in the bid package is current and notifying DED of the package's status;
- Submitting contractors for clearance to DED receiving approval prior to beginning work on a project;
- Submitting quarterly reports to DED to inform the semi-annual report;
- Researching and resolving labor violations;
- Assessing liquidated damages;
- Conduct on-site interviews;
- Setting up wire transfers to liquidated damages and unfound workers;

¹³ For additional information, see section 13.4, **Certified Payroll Report (CPRs)**.

¹⁴ See <https://sam.gov/content/wage-determinations>.

- Reviewing payrolls for restitution;
- Resolving special issues;
- Conducting a pre-construction kickoff conference with prime contractors and subcontractors (optional);
- Conducting field inspections at the job site to establish compliance with labor requirements, including:
 - Ensuring the wage decision and required posters are posted prominently; and
 - Interviewing employees to determine payroll accuracy and compliance with DBRA requirements. The LSO must interview prime contractors, subcontracts whose contract is \$100,000 or greater, at least one (1) of every job classification on site, and any subcontractors with a large number of payroll problems.
- Ensuring that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs by implementing methods for verification of contract signing, execution, and updates from other DED programmatic areas;
- Receiving and transmitting labor standard enforcement reports (“Enforcement Reports”) to DED for transmission to DOL (see **Appendix C: Labor Standards Enforcement Report Template**).
- Providing standard quarterly reports for program activities to DED in order to inform QPR reporting to HUD.
- Communicating to DED the referral potential criminal/complex investigations, debarment, or CWHSSA liquidated damages for routing to HUD by providing DED a summary of the findings, schedule of back wages due, issued notices to the contractor, and notice of intent to assess liquidated damages and implementing the final order of liquidated damages;
- Establishing a complaints process and assure worker complaints are addressed promptly;
- Preparing reports on all enforcement activities;
- Disposing of deposit/escrow accounts established for labor standards purposes; and
- Establishing and maintaining full documentation of all labor standards administration and enforcement activities in accordance with section 13, **Documentation and Reporting** .

Details needed for the appointment of an LSO are provided in **Appendix B: Appointment of Labor Standards Officer Form Template**.

Implementation of the activities described here shall also be the responsibility of any implementing department, contractor, Successful Applicant, or any other Subrecipient agency overseeing project work funded by CDBG-DR.

If they use apprentices or trainees, Subrecipients and Successful Applicants are responsible for providing them on-the-job training opportunities. In addition, Subrecipients and Successful Applicants are responsible for writing and enforcing Labor P&Ps that specify how they will administer, at a minimum, the following:

- Additional classifications;
- Liquidated damages;
- Recordkeeping and retention;
- CPR reporting;
- Unfound worker accounts; and
- Submitting contractors for disbarment.

6.3 CONTRACTORS

Contractors must record new employees using the **Appendix D: New Employee Information Form Template** and using E-Verify on federal funded projects. However, three (3) special classes of employees may be utilized on projects subject to Davis-Bacon Wage Rates and be compensated at less than the Davis-Bacon PWs. These classes are:

- **Apprentices:** Provided they are individually registered in a bona fide apprenticeship program in which the contractor participates and that DOL approves. Apprentices must also satisfy other conditions as specified in the labor standards provisions in the construction contract between the Subrecipient or Successful Applicant and the contractor;
 - Registered Apprenticeship Programs (RAP) must have five (5) components:
 - Paid job
 - On-the-job learning
 - Classroom learning
 - Mentorship
 - Credentials
- **Trainees:** Provided they are in a DOL-approved training program, as documented by formal certification by the DOL, Employment and Training Administration,¹⁵ and they

¹⁵ 29 CFR § 5.5(a)(4)(ii).

satisfy other conditions as specified in the labor standards provisions in the construction contract between the Subrecipient or Successful Applicant and the contractor; and

- **Volunteers:** The use of volunteers on CDBG-DR projects must meet the criteria found in 24 CFR Part 70. Subrecipients and Successful Applicants must contact DED if they intend to use volunteers on projects to ensure compliance with these criteria.
 - Contractors must obtain a HUD waiver to use volunteers for construction in which they indicate that the volunteers are volunteering for the purposes of lowering costs of construction and information sufficient for HUD to make a determination that any amounts saved through the use of volunteers are fully credited to the agency or organization undertaking the construction and that any payments to volunteers are expenses, reasonable benefits, or nominal fees.¹⁶

When any of these employee classes appear on the contractor's weekly payrolls, it is the contractor's responsibility to provide the documentation necessary to permit Subrecipients and Successful Applicants to determine that there is compliance with the Davis-Bacon wage rate determination.

7 BIDDING AND CONTRACTING

7.1 OUTREACH

Pursuant to 2 CFR § 200.321, Subrecipients and Successful Applicants must take steps to affirmatively assure Historically Underutilized Businesses (HUBs), small and minority-owned businesses, women's business enterprises, Section 3 businesses, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.

Subrecipients and Successful Applicants will ensure that clauses implementing DBRA, CWHSSA, FLSA, and the Copeland Act, as well as the appropriate wage determination language are included in all construction contracts. DED approval should be received prior to awarding a bid. Subrecipients and Successful Applicants will not approve any payment, advance, grant, loan, or guarantee of funds after the beginning of construction unless there is on file a certification by the contractor and subcontractors, they have complied with DBRA.

7.2 WAGE RATE DECISIONS

Subrecipients and Successful Applicants must verify all wage decisions for contractors prior to contract award and execution and submit to DED for review. Wage rates must be determined in compliance with Davis-Bacon PWs (see **Appendix E: Prevailing Wages Template**). The SAM

¹⁶ For more information regarding obtaining a HUD waiver, please reach out to DED.

website¹⁷ contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. These classifications and wage rates are binding.

7.2.1 GENERAL WAGE DECISION

Most Davis-Bacon wage decisions are “General Wage Decisions,” also referred to as “area decisions.” DOL publishes general wage decisions and may modify or supersede them throughout the year. The SAM website¹⁸ is the official website for publications of general wage decisions and modifications.

7.2.2 PROJECT WAGE DECISION

If an appropriate wage decision (by location, character of work, or specific trade required) is not published in the general wage decisions, DED will order a “project” wage decision from DOL. Project wage decisions are applicable only to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified. It should be noted that a project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example, a project involves only roof replacement on a four (4)-story apartment building and the only classification needed for the work is a Roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a Roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision must be ordered from DOL.

Project wage decisions must be ordered on a case-by-case basis from DOL. To request a project wage decision, the Subrecipient or Successful Applicant will submit a completed DBRA Standard Form (SF)-30831, *Request for Determination and Response to Request*,¹⁹ to DED. DED will review the request and transmit to DOL.

If wage determination or modifications questions arise, Subrecipients and Successful Applicants should contact DED’s LSCO.

7.2.3 ADDITIONAL CLASSIFICATION REQUEST PROCESS

If a worker classification does not appear on the general wage decision, a Subrecipient or Successful Applicant must request an additional classification from DED, in writing. When requesting an additional wage classification, the following criteria must be met:

¹⁷ See <https://sam.gov/content/home>.

¹⁸ See <https://sam.gov/content/home>.

¹⁹ See <https://www.dol.gov/agencies/whd/government-contracts/construction/forms/sf-308>.

- Provide classification being requested;
- Description of work performed by the requested classification; and
- Proposed rate for the requested classification.

A Subrecipient's or Successful Applicant's LSO can notify DED of a necessary change by submitting SF-1444, *Request for Authorization of Additional Classification and Rate*,²⁰ to DED's LSCO for review and processing. The form must include:

- Subrecipient or Successful Applicant name;
- Project name;
- Contract number;
- Contractor name;
- Bid open date;
- Contractor contract award date;
- Construction work started;
- Project description;
- Location of the project;
- Classification being requested;
- Description of duties performed by the requested classification;
- Proposed rates and any fringe benefits; and
- Appropriate signatures where requested.

DED will track all additional wage classification requests and maintain any associated documents. DED's LSCO will review the request to ensure it meets the requirements of mechanic, which is a skilled worker on-site, or laborer, which is an unskilled worker on site.

Once received, DED has three (3) options:

- If the classification meets the description of laborer or mechanic and is not on the general wage decision, DED's LSCO will submit the additional classification request to DOL for review and rate approval (see ***Appendix F: DOL Additional Classification Request Letter Template***).

²⁰ See <https://www.dol.gov/agencies/whd/government-contracts/construction/forms>.

- If the position does not meet the standards for laborer or mechanic, DED's LSCO will not submit it to DOL.
- If the DED LSCO is unsure whether the classification qualifies, they submit the request to DOL regardless.

The Subrecipient or Successful Applicant can expect to receive a Notification of Classification Submission or a Notification of Rejection of Submission from DED within (30) days. To ensure a timely response, DED will review the status of submissions marked "pending" or "submitted" biweekly.

If DED does not receive a decision regarding the additional wage classification within thirty (30) days, DED's LSCO will continue to demonstrate compliance with labor standards by documenting all submissions to DOL. DED will also submit the classification request to DOL staff and copy the appropriate parties to support the completion of the additional classification request. If necessary, DED can contact HUD's Labor Specialist for assistance. DED should also record when phone calls to DOL or HUD about classification requests were made and keep relevant emails.

8 PRE-CONSTRUCTION PROCEDURES

8.1 PRE-CONSTRUCTION CONFERENCE

Once the contract is executed and necessary documentation is submitted and meets Subrecipient or Successful Applicant and DED requirements, Subrecipients or Successful Applicants may schedule a Pre-Construction Conference (optional) with the contractor and any selected subcontractors. A representative from the selected contractor and any subcontractors, including bookkeeping/payroll staff, must attend this meeting if it is scheduled by the Subrecipient or Successful Applicant. Subrecipients and Successful Applicants should provide notice of the Pre-Construction Conference to DED.

During the Pre-Construction Conference, Subrecipients or Successful Applicants should review all Federal labor standards requirements, including but not limited to DBRA. Subrecipients and Successful Applicants should utilize and reference the Pre-Construction Conference Checklist to ensure all required documents are provided to the contractor and ensure these requirements are met and understood by the contractor (see **Appendix G: Pre-Construction Conference Checklist**). Subrecipients and Successful Applicants must provide DBRA forms that the contractor completes during the meeting or before commencing construction.

During the Pre-Construction Conference, Subrecipients and Successful Applicants should provide the contractor a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects."²¹

²¹ See <https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors-guide-prevailing-wage-requirements/>.

During the Pre-Construction Conference, the LSO should also review the prime contractor's responsibility to:

- Obtain and review payrolls and Statements of Compliance (a.k.a. CPRs) from all subcontractors;
- Submit weekly payrolls and Statements of Compliance (a.k.a. CPRs) signed by an officer of the company or authorized individual on behalf of the company. The signer must have signatory authority (see **Appendix H: Signatory Authority Form**);
- Confirm that paid wages conform to wage rate decisions included in the contract. Subrecipients and Successful Applicants will confirm the job classifications and discuss if additional classifications are needed;
- Confirm that employee interviews will be conducted periodically during the project;
- Confirm that a copy of the wage rate decision must be posted at the job site;
- Confirm that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the DOL. If apprentices or trainees are to be used, the contractor must provide Subrecipients and Successful Applicants with a copy of the certification of their program;
- If the contract is \$100,000 or greater, workers must be paid overtime if they work more than 40 hours in one (1) week, and failure to pay workers at least time and a half violates CWHSSA. In addition to restitution, noncompliance with CWHSSA makes the contractor liable for liquidated damages as prescribed in 29 CFR § 5.8 per day for every day each worker exceeded 40 hours a week without being paid time and a half;
- Any payroll deductions that are not specifically listed in the Copeland Act provisions require the contractor to obtain written permission of the employee prior to making the deductions. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments; and
- Posters²² are required to be posted at the job site, (e.g., "Notice to All Employees Working on Federal or Federally Financed Construction Projects."); and

Subrecipients and Successful Applicants should provide an overview of labor standards provisions and confirm that labor standards and technical specifications are legally binding. Failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially in restitution, liquidated damages, and/or recommendation for debarment.

The Subrecipient or Successful Applicant and their LSO should document and retain Pre-Construction Conference minutes, including a list of attendees and an outline of the required

²² These posters and others are available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>.

Federal/State labor requirements discussed during the Pre-Construction Conference before issuing a Notice to Proceed.

8.2 NOTICE TO PROCEED

Upon contract execution and completion of the optional Pre-Construction Conference, Subrecipients and Successful Applicants will issue a Notice to Proceed to the prime contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

9 MONITORING DURING CONSTRUCTION

Subrecipients and Successful Applicants are responsible for ensuring labor standards requirements are adhered to during construction. This includes adherence to best practices in construction management (e.g., pre-construction conferences, payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.

9.1 PAYROLL REVIEW

Once construction is underway, the prime contractor must complete weekly payroll reports for his employees and sign the Statement of Compliance (a.k.a. CPR) (see **Appendix I: Filling out a Weekly CPR**). The prime contractor must also obtain weekly payrolls (including signed Statements of Compliance (a.k.a. CPRs)) from all subcontractors as they work on the project.

The prime contractor must submit CPRs (including **Appendix J: Payroll Deduction Authorization Form Template**) to Subrecipients and Successful Applicants within a reasonable timeframe to ensure compliance, which is typically no more than 10 business days, following the end of the payroll period. Subrecipients and Successful Applicants will then submit to DOL via DED.

The prime contractor is responsible for the full compliance of all subcontractors on the project and is held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and liquidated damages that may be assessed for overtime violations. The prime contractor must review payroll documentation to ensure there are no discrepancies or underpayments.

Discrepancies or falsification indicators shall be immediately reported to DED, along with the steps being taken by Subrecipients and Successful Applicants to resolve the discrepancies. Red flags that indicate possible falsification include:

- **Greater than 1:1 ratio of laborers to mechanics:** This could indicate that some workers labeled laborers are doing the work of a mechanic, which requires a higher wage.

- **Less than 40 hours per week for all or certain employees:** This erratic work schedule could indicate that hours were reduced to give the appearance of wage compliance.
- **Round or otherwise discrepant wage calculations:** Round numbers, such as \$400/week, computed from uneven hourly rates (e.g., \$15.67/hour) are unlikely to occur and indicate employees may be working on a piece rate basis or lower wage. The falsification could involve hours worked, rate of pay, or both.
- **Extraordinary deductions:** Large or unexplained deductions could indicate employees are kicking back some of their wages, which, while a willful violation, is not necessary a falsification. However, it should be investigated.
- **Submitting excess documentation:** Some contractors attempt to appear more compliant by submitting excess documentation that is neither required nor requested.
- **Ghost workers:** Some contractors hide individual or teams of workers who simply never appear on CPRs but perform work on-site. These ghost workers cannot be spotted on a CPR alone but an LSO and/or LSCO may notice them during workplace interviews.
- **Wages paid in cash:** Contractors may write the full payment on the CPR but pay employees a lower rate in cash. In this case, the reported amount on the CPR does not matter, only what employees are actually receiving.
- **Contractors who cash paychecks:** The contractor may issue payroll checks at the right amount but insist employees cash them with the employer for a lower amount instead of with a bank.
- **Contractor facilitates cashing paychecks:** Contractors may issue the correct checks but then instruct employees to cash them at a bank and return a certain portion of each check to the contractor, lowering the real wage.

Note that an indicator of a falsification does not mean a falsification occurred. More investigation is required to determine willful falsification.

Where underpayments of wages have occurred, the Subrecipient's or Successful Applicant's LSO is responsible for ensuring the correct wages are paid and that the contractor pays wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. If the parties are not willing to adhere to the LSO's directions, the LSO and Subrecipient or Successful Applicant should involve DED and DED's LSCO to ensure compliance and restitution.

9.2 ON-SITE INTERVIEWS

Subrecipients' and Successful Applicants' LSOs are required to conduct job site interviews at least twice during the construction phase of each project. DED reserves the right to require more job site interviews or have the LSCO conduct additional unscheduled interviews. The purpose of the interviews is to capture observations of the work being performed and to get direct information

from the laborers and mechanics on the job as to the hours they work, the type of work they perform, and the wage they receive.

Interviews will include:

- All contractors;
- All subcontractors with an award \$100,000 or more;
- At least one (1) of every job classification on site; and
- Subcontractors with a history of payroll inconsistencies or issues.

The Subrecipient or Successful Applicant, or its LSO, is responsible for comparing the interview forms with corresponding payrolls to ensure employees are paid no less than PWs.

The LSOs will use HUD’s Record of Employee Interview form (HUD-11) for on-site interviews (see also **Appendix K: Record of Employee Interview**).²³

Interviews follow the below guidelines:

| Number | Task |
|--------|--|
| 1 | Interviews are conducted on the job site and privately (this is a one-on-one process). |
| 2 | The interviewer observes the duties of workers before initiating interviews. |
| 3 | Employees of both the prime contractor and subcontractors are interviewed. |
| 4 | To initiate the interview, the authorized person shall: |
| | a Properly identify themselves. |
| | b Clearly state the purpose of interview. |

²³ See <https://www.hudexchange.info/resources/documents/HUD-Form-11-Record-of-Employee-Interview.pdf>. A Spanish language version of the form can be found at: <https://www.hudexchange.info/resources/documents/HUD-Form-11-Sp-Spanish-Version-Record-of-Employee-Interview.pdf>.

| Number | Task |
|--------|---|
| | <p>c Advise the worker that information given is confidential and their identity will be disclosed to the employer only with the employee’s written permission.</p> |
| 5 | When conducting employee interviews, the interviewer pays particular attention to: |
| | <p>a The employee’s full name.</p> |
| | <p>b The employee’s permanent mailing address.</p> |
| | <p>c The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and no other work.</p> |
| 6 | The employee’s hourly rate of pay, to determine if the worker is being paid at least the minimum required by the wage decision. The interviewer ensures the worker is not quoting their net hourly rate or “take-home” pay. |
| | <p>a If it appears the individual may be underpaid, the interviewer closely questions the worker by asking for any records and arranging to re-interview the employee.</p> |
| 7 | Enter the worker’s statement of their classification. |
| 8 | Observe duties and tools used: |
| | <p>a If worker’s statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.</p> |
| | <p>b If there are discrepancies, detailed statements are necessary.</p> |
| 9 | Enter any necessary comments. |
| 10 | Enter interview date. |

The Record of Employee Interview form (see **Appendix K: Record of Employee Interview**) must be compared to the corresponding contractor and subcontractor payroll information.

- If no discrepancies appear, “None” should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person; and

- If discrepancies do appear, appropriate action should be initiated. When a necessary action has been completed, the results must be noted on the Record of Employee Interview form.

Interview forms should be kept as part of project records and shared with DED for recordkeeping purposes.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731),²⁴ investigate the complaint and resolve it when possible (see **Appendix L: Complaint Intake Form**). If there are outstanding issues, consult DOL for clarification.

10 REVIEW PRIOR TO PAYMENT

10.1 PROGRESS PAYMENT

Upon receipt of requests for payment during construction, Subrecipients and Successful Applicants shall monitor compliance with labor regulations and ensure compliance by confirming:

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

Subrecipient and Successful Applicants will share the compliance determination and accompanying documentation with DED. The compliance reviews and determinations made by Subrecipients and Successful Applicants shall be completed in a timely manner to ensure payments to contractors are made by the contractual payment deadline.

10.2 FINAL PAYMENT

When construction work has been completed, the contractor will submit a final request for payment. Before making the final payment, Subrecipients and Successful Applicants must ensure that:

- All weekly payrolls and Statements of Compliance (a.k.a. CPRs) have been received and any discrepancies have been resolved;
- All discrepancies identified through job site interviews have been resolved; and

²⁴ See <https://www.hudexchange.info/resources/documents/HUD-Form-4731-Complaint-Intake-Form.pdf>.

- All files are complete.

Subrecipient and Successful Applicants will share final determination and accompanying documentation with DED.

11 RESTITUTION FOR UNDERPAYMENT OF WAGES

Where underpayments of wages have occurred, the contractor is required to pay wage restitution to the affected employees. Underpayment may be identified through regular monitoring or by an employee who is underpaid (for the latter, see **Appendix L: Complaint Intake Form**). Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

If underpayment is identified, Subrecipients and Successful Applicants shall notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed thirty (30) days to correct the underpayments. Any potential non-compliance with labor standards should be reported to DED via **Appendix C: Labor Standards Enforcement Report Template**, including the corrective actions and restitution paid to address the violation.

The contractor is required to report the restitution paid on a corrected certified payroll. The correction payroll reflects the period for which restitution is due (e.g., payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:

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

A signed Statement of Compliance (a.k.a. CPR) must be attached to the corrected payroll form. Each employee who has received restitution should sign the corrected payroll as evidence of their receipt of the payments.

Subrecipients and Successful Applicants shall review the corrected payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented

on a supplemental correction payroll within thirty (30) days. Subrecipients and Successful Applicants will share determination and accompanying documentation with DED.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor must place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. Subrecipients and Successful Applicants should notify DED and continue to attempt to locate the unfound workers for two (2) years after the completion of the project or three (3) years if there is a willful violation involved (as opposed to general recovery for error).²⁵

Subrecipients and Successful Applicants should require contractors to provide reports on all funds placed in deposit or escrow accounts and activities completed to attempt to locate unfound workers. After two (2) or three (3) years, as appropriate, any amount remaining in the account for unfound workers is returned to DED.

11.1 LIQUIDATED DAMAGES

Liquidated damages are the monetary penalties that may be assessed against an employer for failing to pay employee wages in a timely manner. Under the CWHSSA, liquidated damages shall be computed for each individual employed as a laborer or mechanic as prescribed in 29 CFR § 5.8 for each calendar day on which the individual was required or permitted to work in excess of the standard workweek without payment of the overtime wages. Liquidated damages are levied in addition to restitution of missed or reduced wages.

Liquidated damages are levied as a result of the investigative process. An investigation may begin as a result of a complaint (including a confidential complaint), high violation rates, employment of vulnerable workers, rapid changes in the industry, or an undisclosed reason. If a Subrecipient, Successful Applicant, or DED determines there was a violation, they will determine whether back pay or liquidated damages are owed.

11.1.1 ASSESSING LIQUIDATED DAMAGES

To determine the amount of liquidated damages due, DED's LSCO or the Subrecipient's or Successful Applicant's LSO first determines the number of impacted workers and days the overtime restitution was earned. Each person receives damages per day and per violation.

For example: In 2021, John received \$26.00 an hour. He worked three (3) days where overtime was earned but not paid:

- 5 hours on Wednesday

²⁵ <https://www.hud.gov/sites/documents/13441C9SECH.PDF>.

- 2.5 hours on Friday
- 1.75 hours on Saturday.

Per day, the missed wage calculations are:

Wednesday: $(\$26.00 \text{ per hour} * 1.5) * 5 \text{ hours} = \195

Friday: $(\$26.00 \text{ per hour} * 1.5) * 2.5 \text{ hours} = \97.50

Saturday: $(\$26.00 \text{ per hour} * 1.5) * 1.75 \text{ hours} = \68.25

Total overtime wages = $\$195 + \$97.50 + \$68.25 = \360.75

The missing wages are not the liquidated damages. DED's LSO or the Subrecipient's or Successful Applicant's LSO must also calculate these damages. Because the violation took place in 2021, the penalty assessment is \$27.00.²⁶

$3 \text{ violation days} * 1 \text{ worker} * \$27.00 = \$81.00$

11.1.2 PROCESSING LIQUIDATED DAMAGES

After calculating liquidated damages, the LSO sends a letter of Intent to Assess Liquidated Damages and Right to Appeal to the contractor. This letter must include the total amount of liquidated damages accrued for all workers impacted and state the total amount of overtime, or other restitution accrued (see **Appendix M: Letter of Intent to Assess Liquidated Damages and the Right to Appeal Template**). The LSO must include DED's LSCO and any additional party associated with the noncompliant contractor in the Letter of Intent to Assess Liquidated Damages and the Right to Appeal.

A spreadsheet with the overtime restitution and assessed liquidated damages must accompany the Letter of Intent to Assess Liquidated Damages and the Right to Appeal (described above) and the letter to HUD for the recommendation of waiver or denial as further described below (see **Appendix N: Recommendation to Waive or Deny Liquidated Damages Template**).

11.1.3 DETERMINATION OR WAIVER PROCESS

The amount of liquidated damages determines who is responsible for handling the determination or waiver process. DED's LSCO or the Subrecipient's or Successful Applicant's LSO should begin the process but may need to include others at this stage, according to **Table 1**.

²⁶ See 29 CFR § 5.8 for the most current liquidated damages amount.

Table 1: Responsible Individuals and Actions in Liquidated Damages Cases

| Damages | Process |
|--|--|
| <p>Between \$1.00 and \$99.99</p> | <p>DED's LSCO handles this process. They do not need to send a recommendation letter to HUD and may waive this amount of money without official approval when appropriate.</p> <p>Reasons for approval include:</p> <ul style="list-style-type: none"> • The error is due to a genuine lack of knowledge on overtime rules. In this case, the LSCO should recommend training for the contractor to prevent a future occurrence; • The inconsistency was due to an accidental miscalculation or other mathematical error; • The LSCO discovered the liquidated damages after the project was complete and overtime restitution occurred on an insignificant number of CPRs; and • The contractor or subcontractor caught the error early and restitution was quickly made to impacted workers. <p>Reasons for denial include:</p> <ul style="list-style-type: none"> • Worker complaints or reports to the LSCO or LSO; • Other instances of labor violations; • Multiple occurrences; • Reports of false CPR reporting; and • A DOL investigation related to worker payments. |
| <p>Between \$100 and \$499.99</p> | <p>The HUD regional specialist of the Labor Enforcement Section should handle this process. DED's LSCO should send a letter to them with their recommended action, including a reason (which can be found in the \$1.00 to \$99.99 section above). The letter must include supporting documentation, including:</p> <ul style="list-style-type: none"> • Assessment of liquidated damages spreadsheet; • Letter of Intent to Assess Liquidated Damages and Right to Appeal; and • Any other support documentation the LSCO deems necessary. <p>The LSCO should email this letter to HUD's regional specialist.</p> |
| <p>\$500 or more</p> | <p>The HUD regional supervisor of the Labor and Enforcement Section must handle these issues. DED's LSCO should send a letter to them with their recommended action, including a reason (which can be found in the \$1.00 to \$99.99 section above). The letter must include supporting documentation, including:</p> <ul style="list-style-type: none"> • Assessment of liquidated damages spreadsheet; • Letter of Intent to Assess Liquidated Damages and Right to Appeal; and |

| Damages | Process |
|---------|---|
| | <ul style="list-style-type: none"> Any other support documentation the LSCO deems necessary. <p>The LSCO should email this letter to HUD’s regional specialist (to be forwarded to the regional supervisor).</p> <p>At this level of damages, the LSCO must also draft a Determination of Liquidated Damages Penalty Letter (see Appendix O: Determination of Liquidated Damages Penalty Letter Template). This letter should state the amount of liquidated damages or amount waived, if applicable, in a certified letter sent to the contractor and all appropriate parties. The letter should include required actions for resolution. The LSCO should also provide HUD’s determination to be included in the Determination of Liquidated Damages Penalty Letter.</p> |

11.1.4 PAYMENT PROCESS

Depending on the determination, there may be more required financial actions, such as a wire transfer letter. Where appropriate, the HUD regional specialist in the Labor Enforcement Section drafts this letter and it should include:

- Information laid out in the wire transfer instructions;
- DED’s TIN number (where appropriate); and
- Any specific wire instructions.

12 FORCE ACCOUNT LABOR

Force account labor refers to the use of laborers or mechanics who are employed by the Subrecipient and who serve as contractors for a CDBG-DR construction project. In these cases, the Subrecipient does not have to pay the DBRA PW but can, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the CDBG-DR Program.

If the Subrecipient wishes to use force account labor, they must obtain prior approval from DED’s LSCO. To use force account labor, Subrecipients must meet three (3) criteria:

- There should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors;
- The Subrecipient has the equipment, supervisory skills, a substantial portion of the required work force, and recordkeeping system; and

- The legal counsel of the Subrecipient must make a finding that the project is permissible in accordance with Nebraska's laws and does not constitute a major project nor include construction of a building.

12.1 LABOR AND EQUIPMENT REQUIREMENTS FOR FORCE ACCOUNT LABOR

The Subrecipient may hire some employees to work on the specific project to complement existing employees. The cost of equipment, including the cost of maintenance, operations, and minor field repairs is allowed. For example, the cost to replace a radiator punctured accidentally is an allowable CDBG-DR cost. However, the cost to replace the engine of a diesel bulldozer on a short-term street project is not allowable because equipment may not be purchased with CDBG-DR funds.

The equipment cost allocated to the CDBG-DR project can be determined using allowance or depreciation value. DED must approve such allocations of cost. In rare instances, such as the breakdown of a primary piece of equipment during a street project, the cost of renting a replacement piece of equipment may be allowed with special written approval from DED.

The costs of materials, including transportation and storage, are eligible costs under the CDBG-DR Program. See the **Procurement Policies and Procedures** for additional information on procurement requirements.

13 DOCUMENTATION AND REPORTING

13.1 DOCUMENTATION

Subrecipients and Successful Applicants shall provide all necessary documentation to DED for review and approval. Subrecipients and Successful Applicants shall maintain documentation in accordance with the **Recordkeeping and Data Management Policies and Procedures** to demonstrate compliance with labor standards requirements including, but not limited to:

- Bid and contract documents with the labor standards clause and wage decisions for both Federal and State;
- Payroll forms from the contractor and subcontractors, including signed Statements of Compliance (a.k.a. CPRs);
- Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
- Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime); and

- Enforcement reports (see **Appendix C: Labor Standards Enforcement Report Template**).

Labor standards compliance documents contain highly sensitive and confidential information; therefore, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected is not unduly exposed to financial or personal risk.

DED must ensure Subrecipients and Successful Applicants follow the guidelines outlined in Labor Relations Letter 2006-02, to minimize risk of improper and/or unnecessary disclosure. Guidelines include:

- Keep sensitive materials secret at all times (e.g., in locked file cabinet, not left in areas accessible to the public);
- Do not include Social Security Numbers on documents and records unless it is absolutely necessary;
- Do not disclose the identity of any informant unless it is necessary and only if authorized by the informant; and
- Dispose of documents and records containing sensitive information responsibly.

For more information, see **Recordkeeping and Data Management Policies and Procedures**.

13.2 FORCE ACCOUNT RECORDKEEPING

Generally, Subrecipients and Successful Applicants are required to maintain records for all professional services, construction, rehabilitation, repair, or demolition services. The Subrecipient and Successful Applicant must maintain thorough documentation of all costs; for Subrecipients, this includes those associated with force account labor described herein. All force account labor costs charged to the project must apply to a particular line item of the CDBG-DR contract budget. Related recordkeeping must include, at a minimum, evidence of the following:

- The project meets the standards under which forced account labor is allowable;
- Employee personnel policies delineate paid leave, overtime, equal employment, travel, terms of employment policies, compliance with the FLSA, and Section 504;
- If temporary workers are hired to complete the project, the employee personnel policies must address temporary employees;
- A personnel cost calculation that is signed and approved by either the employee's supervisor or other authorized personnel that determined the hourly cost for each employee;
- Timesheets documenting the workers and work performed;

- All timesheets should correspond to the Subrecipient's regular employee timesheets to the extent that no one should be charged to the project if they are not in attendance (the Subrecipient may be required to supplement certified timesheets with the corresponding Subrecipient payroll records);
- An equipment cost calculation that is signed and approved by authorized personnel that determines the hourly cost for each piece of equipment;
- Documentation of the use of the equipment and operator. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost. Leased equipment must be supported by a copy of the lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA rate for the equipment; and
- Invoices and canceled checks for all construction materials and supplies.

Specific information that must be tracked is detailed in **Appendix P: Force Account Recordkeeping Checklist**. Recordkeeping should include labor cost records, equipment use, materials procurement, and project execution and administration provided by Subrecipients.

13.3 MONITORING

Davis-Bacon compliance is regularly assessed by DED through monitoring, and any findings related to compliance will be reported through a Monitoring Report issued after monitoring visits (see the **Monitoring and Compliance Plan**).

Typical monitoring findings may include:

- Inappropriate use of the apprentice and trainee classifications;
- Use of a classification that is not in the wage decision or is vague (i.e., "operator");
- Failure to obtain subcontractor payrolls;
- Lack of signed authorizations from workers with "other" deductions;
- Lack of interviews, including not covering enough classifications or not interviewing subcontractors;
- "Salaried" workers covered by DBRA not treated as hourly workers for regular and overtime purposes;
- Using one (1) wage decision when two (2) are required based on the type of work in each category; and
- Payrolls failing to reflect which wage decision(s) is applicable to which worker, particularly if two (2) wage decisions are used, and workers are not paid the highest hourly rate possible for that classification.

For more information regarding monitoring, see the **Monitoring and Compliance Plan**.

13.4 CERTIFIED PAYROLL REPORT (CPRS)

Subcontractors must submit CPRs to the prime contractor starting the first week they work on a project and continuing every week afterwards until work is complete. If there is a temporary break in work, the subcontractor can do one (1) of the following:

- Submit a “no work” payroll;
- Inform the prime contractor in advance when no work will take place; or
- Number each CPR consecutively.

Subcontractors may use Optional Form WH 347, though this is not the only acceptable way to submit this information. However the CPR is submitted, it must be signed and contain language certifying the information is true and correct.

The prime contractor must review subcontractor’s CPRs for compliance before submitting them to the Subrecipient or Successful Applicant. In addition to submitting CPRs to the Subrecipient or Successful Applicant, contractors must also keep their own copies and other basic records available for review or copying by an authorized DED, HUD, or DOL representative.

13.4.1 COMMON ERRORS AND CORRECTIONS

Subrecipients and Successful Applicants must review CPRs to ensure workers are being paid no less than the PWs, that there are no unauthorized withholdings, and that there are no other falsifications. At a minimum, LSOs will review CPRs for:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee more than 40 hours per week is being compensated at rates not less than one and one-half times the basic rate of pay;
- Apprenticeship and trainee information;
- Review of deductions for any non-standard deductions, many of which require a Payroll Deduction Authorization Form (see **Appendix Q: Payroll Deduction Authorization Form**) as confirmation; and
- The Statement of Compliance (a.k.a. CPR) has been signed by the owner or an officer of the firm.

If they find discrepancies or errors, the Subrecipient or Successful Applicant notifies the contractor or subcontractor about the inconsistencies and what steps must be taken to correct them.

The CPR Review Log (see **Appendix R: CPR Review Log**) should be used to review the submitted CPRs for accuracy, completeness, and compliance with PWs and labor standards requirements.

Typical errors and corrections include:

- **Inadequate payroll information:** When contractors use alternative payroll formats, they may not include all necessary information. In this case, the Subrecipient or Successful Applicant will ask them to resubmit the CPR in an acceptable form.
- **Missing identification numbers:** If the first CPR on which a specific employee appears does not include their individually identifying number, the contractor must supply that information on the next CPR or resubmit the CPR with a correction.
- **Incomplete payrolls:** If the CPR information is not complete, the contractor will be asked to submit a correction.
- **Classifications:** If classifications are missing from the CPR, the contractor will be asked to reclassify the employees. If this results in underpayment, the contractor will owe wage restitution.
- **Wage rates:** If the CPR wage rates are less than the rates on the wage decision, the contractor must pay wage restitution to affected employees.
- **Apprentices and trainees:** If registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the contractor must resubmit each apprentice's or trainee's registration.
- **Overtime:** If employees did not receive at least time and a half for overtime, the contractor will pay restitution (if the project is subject to CWHSSA) or be notified of the possible FLSA violation (if not subject to CWHSSA).
- **Computations:** If there are mathematical errors, the contractor will be asked to take greater care and pay wage restitution if necessary.
- **Deductions:** If deductions are not identified or are very high, the contractor may be asked to identify them, provide employee authorization, and explain the atypicality.
- **Fringe benefits:** If fringe benefits are included but payroll does not indicate how employees were paid, the contractor may be asked to submit a correction.
- **Signature:** If the CPR is not signed, the contractor must resubmit with a signed CPR.
- **On-site interview comparisons:** If there are discrepancies between CPRs and interviews, the contractor will be asked to submit a correction.
- **Correction certified payroll:** When there are changes to a submitted CPR, the contractor must report them on a certified correction payroll.

13.5 SEMI-ANNUAL REPORTING

In addition to weekly CPRs, contractors must provide DOL, through DED, with semi-annual labor standards enforcement reports (see **Appendix C: Labor Standards Enforcement Report Template**). These are submitted twice a year in two (2) periods: a report for October 1 through March 31 and a second report for April 1 through September 30.

The report must include information such as:

- Contracting activities:
 - Number and dollar amount of prime contracts subject to DBRA or CWHSSA;
 - Project name and number for each contract; and
 - Wage decision number and lock-in date for each contract.
- Enforcement activities, including contractors who and projects that received complaints; and
 - Number of restitution incidents, employees affected, and amount collected and disbursed during the period.

14 APPENDIX LIST

The following appendices reflect tools and templates that will be developed throughout the course of program launch and implementation to support Subrecipients and Successful Applicants with carrying out the procedures set forth in this P&P. Items marked in gray indicate that the tool or template is still under development at the time of this document's release. In many cases, a similar form exists under the regular CDBG program and will be adapted for CDBG-DR.

These tools do not reflect any additional policy or procedural element that is not described in the main P&P document. They will be added as appendices to this P&P for convenience of use by relevant stakeholders.

Appendix A: Davis-Bacon Project Applicability Cheat Sheet

Appendix B: Appointment of Labor Standards Officer Form Template

Appendix C: Labor Standards Enforcement Report Template

Appendix D: New Employee Information Form Template

Appendix E: Prevailing Wages Template

Appendix F: DOL Additional Classification Request Letter Template

Appendix G: Pre-Construction Conference Checklist

Appendix H: Signatory Authority Form

Appendix I: Filling out a Weekly CPR

Appendix J: Payroll Deduction Authorization Form Template

Appendix K: Record of Employee Interview

Appendix L: Complaint Intake Form

Appendix M: Letter of Intent to Assess Liquidated Damages and the Right to Appeal Template

Appendix N: Recommendation to Waive or Deny Liquidated Damages Template

Appendix O: Determination of Liquidated Damages Penalty Letter Template

Appendix P: Force Account Recordkeeping Checklist

Appendix Q: Payroll Deduction Authorization Form

Appendix R: CPR Review Log