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GLOSSARY

APPRENTICES

Apprentices may be paid less than the pre-determined rate for the particular job classification that they are employed under if: 1) those apprentices are individually registered in an apprenticeship program that is registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or 2) if a person is employed in his/her first 90 days of probationary employment as an apprentice who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency. The allowable ratio of apprentices to journeymen in any classification shall not be greater than the ratio permitted to the contractor for the entire work force under the registered program.

BID CONTRACT DOCUMENT

Program Management will **only** accept the Bid Document contained in our training manual for submission with Plans and Specifications to our office. No other version or alteration of this bid contract document will be reviewed by our staff. Wage rates must be included in the document upon submission. **Only a complete set of Plans and Specifications will be accepted for review.**

CONSTRUCTION CONTRACT ACTIVITY REPORT

Once construction is under way, it is the responsibility of the grant recipient to submit to Program Management a contractor/subcontractor activity report. Refer to the Equal Opportunity/Fair Housing Chapter. (Exhibit C-14).

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

All laborers and mechanics that work over forty hours per week are to be paid one and one-half times their basic rate of pay. Contractors in violation of this act will be liable to the United States for a penalty of \$10.00 per day per employee as well as to any affected employee for unpaid wages.

COPELAND ANTI-KICKBACK ACT

The **Copeland Act (Anti-Kickback Act)** provides that no deduction or rebate on any account will be taken from an employee's pay, **except** deductions permitted by law, **unless** this deduction is authorized in writing by the employee.

DAVIS-BACON ACT

Any contract over \$2,000 that uses CDBG dollars for construction, alteration and/or repairs must pay those wage rates, fringe benefits and payments without deductions or rebates as determined by the Davis-Bacon Act to all laborers and mechanics working on the project. Davis-Bacon applies and wage rates are required for all subcontracts or lower-tier contracts let under a prime contract that exceeds \$2,000 regardless of the amount of the subcontract or lower-tier contract.

NOTE: This Act does not apply to the construction or rehabilitation of residential projects of fewer than 8 units or to force account work.

EMPLOYEE INTERVIEWS

Employee interviews are to be conducted with sufficient frequency to establish the degree of accuracy of the records. Conducting employee interviews periodically and particularly each time a contractor for a different trade works on the project site is one way to assist in ensuring compliance.

FORCE ACCOUNT WORK

Construction, rehabilitation, repair or demolition that is performed by municipal employees.

NOTE: In order to do force account work, the grant recipient must own the equipment, use city or county forces, and obtain State approval by submitting the following information:

1. Names and engineering qualifications of personnel performing the work and their capabilities for design, supervision, planning, inspection, testing, etc. as applicable.
2. Details of experience with projects of like or similar nature.
3. Information on workload as it may affect capacity to do the work within time frame or work schedule.
4. Justification for doing the work by force account rather than by contract.
5. A complete breakdown showing: a) the number of work hours and cost per hour for each category of labor, and b) a list of non-salary costs such as materials, supplies, equipment, etc.
6. Certification from the above mentioned personnel's supervisor that they are full time city/county employees and have not been hired just for this project.
7. Certification that the equipment to be used is owned by the county/city and will not be rental equipment.

FRINGE BENEFITS

Fringe benefits are the rate of costs to the contractor or subcontractor for the provision of benefits to laborers and mechanics for:

1. Medical or hospital care;
2. Pensions on retirement or death;
3. Life insurance, disability and sickness insurance, or accident insurance;
4. Vacation and holiday pay;
5. Defraying costs of apprenticeship or other similar programs; and
6. Other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State or local law to provide any such benefits.

HELPERS

This class of workers can no longer be used on any CDBG funded project.

LABORERS AND MECHANICS

Laborers and Mechanics are those employees working on a CDBG funded project.

OVERTIME VIOLATIONS AND LIQUIDATED DAMAGES

The prime contractor shall be liable to all employees for any unpaid wages. The prime contractor shall also be liable to the United States government for liquidated damages at the rate of \$10.00 per day for every employee that did not receive time and one-half as necessary under the Contract Work Hours and Safety Standards Act. Liquidated damages may also be assessed a contractor whose construction time goes past the stated time limit for construction of the project, as stated in the project specifications from *Information for Bidders, Item 9*.

PAYROLL

Contractors, both prime contractors and subcontractors, are to submit payrolls to the Grant Recipient on a weekly basis. Grant Recipients are to **promptly** review these payrolls against the Wage Rate Determination issued for the project. The grantee should check for proper payment of each classification, overtime payment (if applicable), fringe benefit payment, etc. Any discrepancies or questionable items should be recorded for follow-up. If there are no discrepancies, write "none" in the space provided for remarks. If payrolls are not certified by the owner or an officer of the firm, a letter authorizing the designated person to supervise payment must be submitted with the first payroll.

PRE-CONSTRUCTION CONFERENCE

Prior to construction, the Grant Recipient must hold a pre-construction conference with the prime contractor, all available subcontractors, and lower-tier contractors. All parties shall then be advised of their responsibilities and obligations regarding labor standards

regulations. A report of the minutes is to be kept on file by the grantee. Minutes must contain:

1. Project name, location and description, wage determination number;
2. Name of contractor;
3. Contract amount;
4. Date and place of conference;
5. Conference attendees and title or affiliation; and
6. Summary of items covered.

PRIME CONTRACTOR

The Prime Contractor is that contractor to whom the project was awarded as a result of bidding and/or other means by the grant recipient. The Prime contractor is responsible for all acts and omissions of his subcontractors and lower-tier contractors. In addition, the prime contractor is responsible for ensuring that the Federal Labor Standards Provisions and the applicable wage decision are included in all subcontracts. Subcontractors are responsible to ensure that Federal Labor Standards Provisions and the applicable wage decision are inserted in all lower tier contracts.

SUBCONTRACTOR

Subcontractors are contractors that are hired by and work directly for the prime contractor. The prime contractor is responsible for all subcontractors adhering to CDBG regulations.

TRAINEES

Trainees may be paid less than the pre-determined rate for the particular job classification that they are employed under if the trainee is 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 exceed the percentage allowed by the Employment and Training Administration.

WAGE RATE DETERMINATION REQUEST

The Wage Rate Determination Request form is used to obtain a Davis-Bacon wage rate decision. The form (Labor: E-1) should be completed by the grantee and submitted to our office. The appropriate wage rate decision will be issued and returned to the grantee for insertion in the plans and specifications.

WORKING FOREMAN

A working foreman is one who devotes more than 20 percent of his/her time during a work week to mechanic or laborer duties, and who must be paid no less than the applicable rate for the hours so worked. The payroll should contain the normally required information of the person, the trade he/she is performing, the hours worked, hourly rate of pay, etc.

LABOR STANDARDS

Upon receipt of the Notice of Release of Contract Conditions (NORCC), the grant recipient may proceed with those steps necessary for compliance with labor standards regulations.

This chapter is broken down into five sections which outline the activities that must be undertaken in order to comply with these regulations. The sections include preparation of the bid package, bidding procedure, pre-construction activities, construction activities, and close-out activities.

The sections are set up to be utilized as checklists enabling the grant administrator to easily ascertain which activities have been completed and which are left to complete.

In addition to specific activities that must be completed in order to comply with the labor standards regulations, two files must be kept documenting these activities: a labor standards compliance file and a construction contract compliance file. Checklists of items necessary to complete these files are found in front of the exhibit section.

PREPARATION OF A BID PACKAGE

The grantee should closely monitor the preparation of the bid contract documents to insure that all necessary requirements have been met in order to avoid delays in the project.

WAGE RATES

Any contract let under a prime contract that exceeds \$2,000 and uses CDBG dollars for construction, alteration and/or repairs must pay those wage rates, fringe benefits and payments, as determined by the Davis-Bacon Act, without deductions or rebates, to all laborers and mechanics working on the project, regardless of the amount of the subcontract or lower-tier contract.

Without the correct wage decision in the bid contract document, you will not be permitted to advertise for bids. So plan ahead and send the request in early enough for proper processing. Only classifications listed on the wage decision may be used. Classifications not listed must be added by the additional classification process after contract award.

- Complete the "Request for Wage Determination" form (Exhibit E-1).** Be sure to include a complete description of the work to be performed and the percentage of building construction versus heavy construction.
- Send the request to ECD 45 days before submission of plans and specifications. Because of the nature of the Davis-Bacon law, you cannot advertise for bids until you have the appropriate wage decision bound in your contract documents and approved by ECD.**

PLANS AND SPECIFICATIONS

Use the following list to insure that all appropriate activities are complete and the proper documents are included in the bid contract document to avoid having to

re-submit the document for approval. Have the contract documents completed with all blanks filled and all bid items listed exactly as the bidders will receive them.

- ❑ **Technical bid specifications** should be prepared by your Engineer. They must provide a clear and accurate description of the technical requirements for the materials and workmanship required by the project.
- ❑ **Determine minority/female goals** from the chart in the FH/EO Section of this Manual. Fill out the appropriate blanks on Page 101 of the ECD Supplemental Conditions.
- ❑ **A qualified professional registrant's stamp**, in accordance with state law, must be placed on the first page of the specifications and on each page of the plans.
- ❑ **Certification that Applicable Standards of Accessibility by the Handicapped Will Be Met** (Exhibit E-2) must be executed by the qualified professional registrant, co-signed by a local government official and placed in the contract documents file.
- ❑ **Include all required CDBG documents** (Exhibit E-4). These documents contain federal language which is required of block grant projects and cannot be substituted for or altered. For jointly funded RD-CDBG or EPA-CDBG projects, use RD or EPA forms plus the following CDBG documents:
 - Advertisement For Bids
 - Information for Bidders
 - ECD General Conditions
 - ECD Supplemental General Conditions
 - Certification of Bidder Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
 - Certification of Bidder Regarding Equal Employment Opportunity
 - Certification of Bidder Regarding Use of Female/Minority Subcontractors
 - Certification of Bidder Regarding Section 3 and Segregated Facilities
 - Certification by Proposed Subcontractor Regarding Equal Employment Opportunity
 - Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities
 - Certificate of Owner's Attorney

Include a note stating that in the event of conflicts between the two sets of documents, the more restrictive shall apply.

- Include the appropriate cost and pricing format** depending on whether the project is to be bid as a lump sum or unit prices.
- Acquisition of all lands, rights of way and easements** necessary to carry out the project must be completed at this time. Acquisition of real property must conform to the procedures outlined by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Submit land acquisition document (Exhibit E-3) with the plans and specifications.
- Obtain all permits and notify all utilities** about the proposed construction. Obtain all information concerning utilities and include it in the working drawings or plans.
- A review of the documents by your attorney** should be performed to insure compliance with applicable State and Municipal Law.
- A provision to allow rejection of any or all bids** should be included.
- Submit the documents to ECD 21 days before advertising.** Review by other agencies can occur before or during the ECD review period and should be completed and the bid document approved before advertising. The bid document should be completed exactly as the bidders will receive it with all bid items and other blanks filled out.
- Make all corrections before advertising.** If items are missing from the bid document, complete them and send a fully completed and bound copy to ECD for approval before advertising.
- Resubmit the plans and specifications** to our office for approval if there are any changes made.
- Submit addendum** to our office for approval before it is issued.

<p>ADVERTISEMENT OF THE PROJECT BEFORE ECD APPROVAL MAY RESULT IN REBIDDING.</p>

LINE EXTENSION PROJECTS

In order to ensure that LMI beneficiaries are being properly served on a line extension project, the following list of activities must be undertaken before the plans and specs may be approved and the project is advertised.

- All households in the target area not included in the original sample must be surveyed to determine who will receive free service lines and connections.** During the preparation of the application, a target area survey was undertaken to ascertain the number of LMI households. All line extension projects are required to conduct a 100% survey; therefore, all houses in the target area not included in the original sample must be surveyed and the survey forms must be submitted before funds will be released.
- The LMI connections and service lines must be included on the bid form.**

DEVELOPING PROCEDURES FOR HIGH BIDS

Because there is the possibility of high bids, it is advisable that one or more deductible alternates be used in the initial bid specifications for any construction contract paid in whole or in part with CDBG funds. The bid document should specify the method and order in which the alternates will be applied to the bids. The drawings should also clearly show these alternates. The alternates should be applied one at a time, in the order shown in the bid document, to each bid, to determine if any of the bids now fall within the funding limits. If, after applying the first alternate, the bids still exceed the budget, apply the remaining alternates, one at a time, until the adjusted bids come within your budget.

Additive alternates may also be used in the preparation of the bid package. These are similar to the deductible alternates except that they are added to the base bid instead of subtracted. Like the deductible alternates, additive alternates must be clearly outlined in the bid document and shown on the drawings. The alternates should be applied one at a time, in the order shown in the bid document.

It is possible that a bidder who initially was not the lowest bidder may be awarded the project after the alternates are applied. Be sure to apply the alternates fairly and to each bid. ECD must review your procedure before you award the project.

If the lowest bid you receive exceeds the amount budgeted for the construction portion of your project, **you cannot negotiate** with the lowest bidder to bring the contract costs within available funding limits. If you have applied the alternates and you are still over the budgeted amount, you may do only one of the following:

1. **In writing to ECD**, grantee will reject all bids and start over. If any changes are made to the plans and specifications, these changes must be approved by ECD prior to advertising.
2. **Provide the additional funds** needed to pay for the contract from local funds or re-allocation of CDBG funds through a budget revision (contact ECD if the budget is to be revised).
3. **In writing to ECD**, grantee will reject all initial bids and request permission to do a mini-rebid. Consult with your engineer and decide which items would be feasible to eliminate from the construction bid specifications. Changes to the bid specifications **must not change the project scope**. A letter detailing all changes must be **submitted to ECD for written approval**. After this approval has been received, **all bidders must be contacted by certified mail** and requested to resubmit sealed bids reflecting the revised bid schedule. The bidders must be given **at least seven (7) days** to submit new bids and must be informed, in writing, that they have **the right to change any of the prices in their original bids**, as long as they conform to the revised bid specifications. The contract is then awarded to the bidder submitting the lowest responsible, responsive bid.

**NEGOTIATION OF THE CONTRACT PRICE SOLELY
WITH THE LOW BIDDER WILL RESULT IN THE
DISALLOWANCE OF CONSTRUCTION COSTS.**

BIDDING PROCEDURE

Once bid documents have been approved, you may proceed with all activities involved in the bid process. Check to assure that the following items have been appropriately covered:

ADVERTISING FOR BIDS

- Solicit bids by public advertising** as required by Federal procurement regulations.
- Advertise at least once, 14 days prior to bid opening.** You must conform to local procurement regulations if they are more restrictive. If a project is jointly funded, the more restrictive regulations apply.
- Note wage rate, Section 3 and Equal Opportunity provisions** in the advertisement.
- Contact minority and female contractors** in your area directly by telephone or mail and document your efforts. Refer to the Equal Opportunity section of this manual and use the Minority Business Directory as a guide.
- An addendum should be sent to ECD and all contractors** receiving bid documents when a revision is required **prior to bid opening.** This addendum must be mailed by certified mail with return receipt requested to all prospective bidders not later than 72 hours prior to the date fixed for the opening of bids.
- Call ECD 10 days before the bid opening.** Ask the ECD Labor Standards Coordinator to verify that the Davis-Bacon wage decision used in your project has not expired or changed. Please document this call with a memo to your file. Failure to include the correct wage rates in the contract could result in payroll violations that may be difficult to correct.

BID OPENING

The bid opening is to be conducted in a business-like manner on the date scheduled.

- Requirements of the Tennessee Contractors Licensing Act of 1994** should be followed concerning information on the outside of the contractor's bid submittal envelope.
- Bids must remain sealed** until the opening.
- Log time and date of receipt,** name of offerer and procurement number on each bid received.
- Keep minutes of the meeting.** (Exhibit E-5). Read the bids aloud and determine the apparent low bidder.

THE BID AWARD

After the bid opening, the proper City/County officials and their consultant should review the bids. If, for some reason, you feel you must award the contract to someone other than the lowest bidder, contact your ECD representative and advise him/her of the problems or questions you have.

DO NOT AWARD THE CONTRACT WITHOUT ECD APPROVAL.

- Review the bids** for technical and legal responsiveness.
- Evaluate the bidder** and his/her capacity to perform the services required.
- Send the detailed bid tabulations from all of the bidders along with the "Recommendation for Award" (Exhibit E-6), the Certification of Bidder Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, the Drug-Free Workplace Affidavit, and the newspaper bid advertisement to ECD for review and approval as soon as possible.**
- Verification of contractor eligibility** will be mailed to you upon receipt of the bid tabs. This assures that the contractor is not on the *Lists of Parties Excluded From Federal Procurement or Non Procurement Programs*.
- Award the contract, after ECD approval, within 60 days of the bid opening or reject all bids.** There must be enough money in the construction budget to cover the bids in order to award the contract.
- Send the "Notice of Contract Award and Pre-Construction Conference" (Exhibit E-7) to your ECD representative at least ten (10) days before the conference is held.**

If bids exceed the amount budgeted, you cannot negotiate with the bidders to lower the bid. (See the section on developing procedures for high bids.)

PRE-CONSTRUCTION ACTIVITIES

Once the contract has been awarded, there are several activities to be performed before construction can begin.

CERTIFICATIONS AND ASSURANCES

- All EO and Section 3 forms, the Certification of Bidder Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, and the Drug-Free Workplace Affidavit must be filled out.** These forms should remain bound in the contract document upon completion and kept in the City's/County's file. All subcontractors must fill out the appropriate forms also.

- ❑ **All bonding and insurance provisions must be met** as required in the contract. These documents should be attached to the contract document.

CONDUCTING A PRE-CONSTRUCTION CONFERENCE

A pre-construction conference should be conducted in a business-like manner with the Prime Contractor, all available subcontractors, and lower-tier contractors in attendance. In addition, the individual responsible for preparing the payrolls should be encouraged to attend. Close attention should be given to issues and questions involving labor and payrolls. Keep an accurate record of all items covered at the meeting.

- ❑ **Cover all labor and payroll issues** as shown:
 1. Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements, as well as the technical job requirements.
 2. Explain that each contractor and subcontractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company. The prime contractor is responsible for securing payrolls and Statements of Compliance from all subcontractors.
 3. Explain that wages paid must conform to the wage rate decision included in the contract.
 4. Identify classifications that may be needed that are not included on the wage decision. If an additional classification is needed, the grantee shall contact the ECD Labor Standards Coordinator for assistance.
 5. Indicate that a copy of the wage rate decision and appropriate labor and equal opportunity posters must be posted on the job site. All must be accessible and visible to the workers.
 6. Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by DOL's Bureau of Apprenticeship and Training. The telephone number for the Bureau's Nashville Office is (615) 781-5318. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the DOL certification of his/her program. Helpers are not permitted to be used on any CDBG funded project.
 7. Explain that workers must be paid overtime if they work more than 40 hours in one week. Failure to pay workers at least time and one-half each time they work in excess of 40 hours in one week violates the Contract Work Hours and Safety Standards Law. In addition to restitution to the worker, the contractor is liable for liquidated damages of \$10.00 per day for every day each worker worked more than 40 hours a week without being paid time and one-half.

A waiver of the penalty (liquidated damages) in amounts less than \$500 may be granted by the Regional Labor Relations Officer. Waivers of the penalty in amounts of \$500 or more may be granted by the Headquarters Office of Labor Relations or the U.S. Department of Labor. Waivers can be recommended only if the violations were inadvertent, notwithstanding the exercise of due care. The prime contractor must also demonstrate the exercise of due care in preventing violations by subcontractors.

8. Explain that no payroll deductions can be made that are not specifically provided for by law unless authorization is obtained from the worker. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kick back" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions should be treated as a serious discrepancy and should be resolved prior to contractor payments.
 9. Explain debarment proceedings relative to violation of Labor Standard and Equal Opportunity requirements.
- Correct any deficiencies** involving incomplete EO forms, subcontractor certifications, eligibility verification, so that everything is in order before construction begins.
 - Explain compliance review requirements** such as grantee's weekly review of the payrolls and employee interviews.

NOTICES

There are several documents which must be completed at this stage of the project in order to meet compliance requirements.

- Prepare the Pre-Construction Conference Report** (Exhibit E-8). This report is to be signed by the prime contractor as proof that he/she attended the pre-construction conference and that all items documented in the minutes were covered at the meeting.
- "Notice to Proceed"** (Exhibit E-9) authorizes the contractor to begin work on a designated date. Send a copy to the contractor. Retain a copy for your files signed by the contractor indicating that he/she was properly notified.
- "Notice of Start of Construction"** (Exhibit E-10) informs ECD that construction will begin on a designated date and how many working days are allowed. Send a copy to ECD.
- "Contract/Subcontract Activity Report"** (Exhibit C-14) will be sent to the grantee once ECD receives the "Notice of Start of Construction." This form must be completed for all prime contractors and subcontractors for the project. If additional contractors are added to the project after the report's submittal, an additional report must be made and submitted for our records.

CONSTRUCTION ACTIVITIES

After construction has been initiated, several important tasks must be undertaken in order to comply with the labor standards regulations during this phase of the project. These activities include payrolls, employee interviews, and reports.

PAYROLLS

The proper procedures for submitting and checking payrolls must be closely followed. The failure of contractors to pay wages properly will result in adjustments to an employee's salary and may also result in financial penalties. Therefore, it is important that any discrepancies in the payrolls be detected early. The following activities need to be undertaken in regard to the payrolls.

- Payrolls and written Statements of Compliance must be submitted weekly** (Exhibits E-11 and E-12) to the Grant Recipient by all of the contractors. The written Statements of Compliance must be signed by the owner, an officer or a designated employee of the firm. If a designated employee is to certify the payrolls, authorization for this individual to supervise payment must be submitted with the first payroll.
- Check the payrolls for accuracy** on each job classification against the Davis-Bacon wage rates. The prime contractor shall be liable to all employees for any unpaid wages. The individual reviewing the payrolls shall make sure of the following:
 1. The dates and days of the week have been entered on the payroll.
 2. Payrolls are sequentially numbered.
 3. Payroll number one carries the contractor's IRS Employer Identification Number in the upper left corner of the front page.
 4. Each employee's name, complete address, and Social Security number are shown on the first payroll on which that employee appears.
 5. Workers' classifications are listed on the prevailing wage determination. No substitutions are allowed. Wage classifications must be shown on every payroll.
 6. Wage rates paid to workers are equal to or exceed those rates listed on the wage decision for the appropriate classification.
 7. For any apprentices or trainees listed, evidence of proper registration must accompany the first payroll upon which they appear.
 8. The disposition of all required fringe benefits has been satisfactorily explained on the reverse of the payroll form.

9. Deductions taken are those permitted by law or are authorized in writing by the employee. One blanket statement is sufficient for deductions made on a regular basis.

An example payroll is shown in Exhibit E-13.

- ❑ **Check the payrolls to make certain that overtime compensation was paid accordingly.** The prime contractor shall be liable to the United States Government a penalty of \$10.00 per day per employee for each day a worker is required or permitted to work over 40 hours per week and is not paid at the rate of one and one-half times the worker's basic hourly rate. In addition, the prime contractor shall be liable to the worker for any overtime worked.
- ❑ **Electronic Wire Transfer for Liquidated Damages.** There is a new procedure for paying liquidated damages. The following is for informational purposes and you are not required to take any action. Should you discover a contractor violating overtime provisions, please contact your program representative immediately. You then will be advised of any steps you might need to take.

Once a violation of the overtime provisions is discovered, there are two possible scenarios that may develop.

SCENARIO I

1. ECD drafts a letter to the contractor to assess liquidated damages (*Notice of Assessment*). Any appeals will be sent to HUD-Labor Relations through ECD. The contractor has 60 days to file a request for waiver or reduction.
2. A copy of the Notice of Assessment will be sent with a cover letter to HUD-Labor Relations containing this basic information.
 - a. Name and address(es) of involved contractor (*and subcontractor, if applicable*).
 - b. Company representative(s) present at the pre-construction conference.
 - c. Whether Labor Standards, including overtime provisions, were included in the contract/subcontract.
 - d. Whether an attempt was made by contractor/subcontractor to conceal hours worked or otherwise circumvent law, and contractor's promptness and willingness to make restitution.
 - e. State the date the contractor was given appeal rights by ECD.
3. The contractor wire transfers money to the U.S. Treasury. The contractor then sends a copy of the wire transfer notice to ECD.
4. ECD writes HUD-Labor Relations stating that the contractor has paid assessment.

SCENARIO II

1. Refer to 1. in Scenario I above.
2. Refer to 2. in Scenario I above.
3. The contractor appeals and requests a waiver through ECD.
4. ECD transfers the appeal to HUD-Labor Relations. Deposit agreements will no longer be used for liquidated damages unless ECD chooses to close the project prior to resolution of the appeal by HUD-Labor Relations.

EMPLOYEE INTERVIEWS

The person performing the employee interviews must be knowledgeable of construction trade practices and should understand that labor standards enforcement is an important contract requirement. As has been previously mentioned, the failure of contractors to comply with labor regulations may result in adjustments to an employee's salary and may also result in financial penalties; therefore, in order to ensure that the employee interviews are conducted properly, it is imperative that the following conditions are met:

- Check the construction site** for the appropriate job safety, equal opportunity and wage rate posters (Exhibit E-15).
- Conduct employee interviews with sufficient frequency to establish the degree of accuracy of records.** These interviews should be representative of all classifications of employees on the project.
- The interview should take place on the job site.** In the event that an interview cannot be conducted properly and privately on the job site, the interview can be undertaken at the employee's home, the agency's office, by mail or telephone.
- Observe the duties of the worker** before the interview is initiated to make certain that the employee's job duties correspond to his/her job classification.
- Begin the interview by identifying yourself,** clearly stating the purpose of the interview, advising the worker that the information given is confidential, and that his/her identity will be disclosed to the employer only with the employee's written permission.
- Utilize the "Record of Employee Interview"** (Exhibit E-16) in recording the employee interview. The interviewer should pay particular attention to:
 1. The actual employer's name and not the name of a first line supervisor
 2. Employee's name
 3. Employee's permanent mailing address

4. The last date and the number of hours the individual worked on that particular project.

It should be made clear that these questions relate to work on this project and not other work.

5. The hourly rate of pay.

The interviewer should be sure that the worker is quoting his/her gross hourly rate, not the "net" hourly rate. The individual must be paid at least the minimum required by the Davis-Bacon wage decision. If it appears that the worker is underpaid, the interviewer should closely question him/her and ask to see any records of payments (check stubs, etc.) In addition, it should be arranged to re-interview the employee.

6. Job classification.

It is important that the worker's description of his/her classification be entered on the form. Be sure to use proper job class titles.

7. Duties and tools used.

This is one of the most important items on the interview form. The worker must be observed before the interview takes place and the actual tools being used and work being performed should be recorded on the interview form. Then, this observed data is compared with the worker's statements and with payroll records to see if discrepancies exist. If there are discrepancies, further investigation and explanation are necessary.

8. Any comments that the interviewer feels necessary should be recorded.

9. The exact date the interview took place should be on the form.

Check the interview against the payroll. If no discrepancies appear, "none" should be written in the remarks space. If discrepancies do appear, the appropriate action should be initiated. When the necessary action has been completed, the results should be noted on the interview.

Identify and correct discrepancies between on-site interviews, payrolls and the Davis-Bacon wage decision. If there is a problem, contact your program representative.

CLOSEOUT ACTIVITIES

Inspection and acceptance of the work, close-out of construction and making the final payment involve the completion of the following tasks:

A certification of completion of work and a request for final payment should be submitted by the contractor to the grant recipient's engineer/architect.

A final inspection should be arranged.

- ❑ **A final inspection report** should be submitted by the architect/engineer to the grant recipient.

- ❑ **All labor compliance activities must be completed**, including:
 - Reviewing all weekly payrolls and statements of compliance;
 - Resolving all interview discrepancies;
 - Satisfying all equal opportunity requirements;
 - Receiving all contractor/subcontractor certifications;
 - Resolving all monitoring findings;
 - Resolving all claims and disputes involving the contractor;
 - Completing all files; and
 - Filing as-built plans.

- ❑ **A Final Wage Compliance Report** (Exhibit E-17) must be filed with the State.

- ❑ **The "Notice of Completion" for the project should be publicly advertised.** The Notice should request anyone having a claim against the project to notify the City or County. If no claims are made during a 10 day period, the release of liens from the contractor may be accepted and submitted to the State with the contractor's final pay estimate, so that the retainage may be released. (See Financial Chapter) A copy of the advertisement of the "Notice of Completion" should accompany the final "Request for Payment."

LABOR STANDARDS COMPLIANCE FILE

The Labor Standards Compliance File should contain the following items at project completion:

- ① Wage Rate Request Form and Wage Decision. (Exhibit E-1)
- Certification of Compliance with Minimum Standards for Accessibility by Physically Handicapped. (Applicable to buildings only.) (Exhibit E-2)
- Memo to file that the 10-day wage call was made.
- Minutes of the bid opening. (Exhibit E-5)
- ① Detailed Tabulation of Bids.
- ① Recommendation for Award (Exhibit E-6)
- Verification of contractor eligibility.
- ① Notice of Contract Award and Pre-Construction Conference. (Exhibit E-7)
- Pre-construction Conference Report. (Exhibit E-8)
- ② Executed Contract Documents including all Certifications (Exhibit E-4).
- Notice to Proceed. (Exhibit E-9)
- ① Notice of Start of Construction. (Exhibit E-10)
- ② Weekly payrolls and Statements of Compliance signed by an officer of the company, and evidence that payrolls were checked against the wage decision. (Exhibits E-11 and E-12)
- "Other Deductions" Authorization (Exhibit E-14), if applicable.
- ② Monthly employee interviews, including the completed appropriate sections indicating that the interviews were checked against payrolls and the applicable wage rate decision and that the posters were on site. (Exhibit E-16)
- ① Final Wage Compliance Report. (Exhibit E-17)

If discrepancies occur:

- Evidence of restitution/resolution of identified discrepancies.
- Complaints from workers, if any, and actions taken.
- Liquidated damages assessed, appeals, if any, and outcome.

-
- ① Must be sent to ECD.
 - ② May be kept in a separate file.

CONSTRUCTION CONTRACT COMPLIANCE FILE

The Construction Contract Compliance File should contain the following items at project completion:

- Preliminary Design and Cost Estimates.
- Final Design Documents and Cost Estimates.
- Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids.
- Approval of Bid Documents by authorities having jurisdiction over the project, as appropriate.
- Certification of Insurance/Bonding.
- Construction site visit reports.

**CERTIFICATION
of
Compliance with Minimum Standards for Accessibility by the
Physically Handicapped**

Contract No. _____

Project Name: _____

Address: _____

Pursuant to the requirements of the Architectural Barriers Act of 1968, 42 USC 4151, and the regulations issued subsequent thereto, the undersigned certifies that the design of the above-mentioned project is in conformance with the minimum standards contained in the American Standard Specifications for Making Buildings and Facilities Accessible To and Usable by the Physically Handicapped, Number A-117.1R-1971 (as modified by 41 CFR 101-19.603).

Professional Registrant for the Project: _____
(Legal Name and address)

Registration Number: _____

Signature: _____
(Print or Type Name)

Date: _____

Local Government Official: _____
Signature

Date

LAND ACQUISITION

All permanent easements, land purchases, city/county/state right of ways, Department of Transportation, Corps of Engineers and railroad permits and any other land access agreements must be obtained and recorded (if applicable) with the appropriate agencies **prior** to ECD approval of plans and specifications.

Please check the following boxes and sign below:

- | yes | no | n/a | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | All permanent easements necessary for the construction of this project have been acquired and recorded with the appropriate agency. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | All land acquisition necessary for the construction of this project has been acquired and recorded with the appropriate agency. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | All right-of-ways, permits, and land access agreements necessary for the construction of this project have been acquired and recorded with the appropriate agency(s). |

OR

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | The construction of this project requires no acquisition of land, permanent easements, right-of-ways, permits or land access agreements. |
|--------------------------|--------------------------|--------------------------|--|

Signature of grantee, engineer/architect,
or project administrator

Date

**This form must be sent to ECD before we
can approve plans and specifications.**

EXHIBIT E-4 IS THE SET OF DOCUMENTS
WHICH ARE TO BE INCLUDED,
ALONG WITH SPECIFICATIONS,
IN THE BID CONTRACT DOCUMENT. *

Required Insertions for Project Specifications

The following bid information must be completed in the project specifications prior to submittal to ECD for our review:

Information For Bidders

- (1) Receipt and Opening of Bids
- (5) Method of Bidding
- (9) Time of Completion and Liquidated Damages
- (11) Addenda and Interpretations

Supplemental General Conditions

- (9) Builder's Risk Insurance
- (10) Special Equal Opportunity Provisions
 - B. Executive Order 11246
 - 2. Notice of Requirement for Affirmative Action to ensure Equal Opportunity
 - b. Goals for minority participation and Goals for female participation*
(* currently statewide 6.9% for female)
 - d. "covered area" (city/county where work will be done)

Be sure you have the current Davis-Bacon Wage Decision before you bid your bid document.

*

See the bid contract document section at the end of this chapter for a copy of these documents.

MINUTES OF BID OPENING

Bid Opening for Fifth Street Improvements.

The first bid opening was opened at 3:05 P.M. on April 1, 2000. Bidders and bid amounts in order of opening:

Walton Contruction	\$ 235,723.55
South Ark Construction	\$ 220,650.75
Big Time Construction	\$ 310,375.75

Bid Award is scheduled for April 8, 2000.

(Signed)

Mary Simmons
City Secretary

RECOMMENDATION FOR AWARD

To: ECD/Program Management

From: _____ *(Grantee)*

Date: _____

This is to inform you that the bids have been reviewed for technical and legal responsiveness. It is our recommendation that _____*(Name of Company)*_____, *(I.D. Number)*_____ of _____*(City)*_____, *(State)*_____ be awarded the contract in the amount of _____*(Amount)*_____ for the _____*(Year)*_____, *(Grantee Name)*_____, *(Brief Description)*_____ CDBG project.

PRE-CONSTRUCTION REPORT

Project Name: _____ Project #: _____

Location: _____

Description of Work to be Performed: _____

Wage Decision Number: _____

Contractor: _____ Contract Amount: \$ _____

Conference Date: _____ Place: _____

Participants:

<u>Names</u>	<u>Titles</u>
_____	_____
_____	_____
_____	_____

Items Covered:

- | | |
|--|---|
| <input type="checkbox"/> Initial Starting Date
<input type="checkbox"/> Inspection and Supervision
<input type="checkbox"/> Labor Standards
<input type="checkbox"/> Housing and Urban Development Act of 1968, Section 3
<input type="checkbox"/> Equal Opportunity
<input type="checkbox"/> Reporting Requirements and Sanctions
<input type="checkbox"/> Payrolls | <input type="checkbox"/> Employee Interviews
<input type="checkbox"/> Insurance Coverage
<input type="checkbox"/> Construction Safety
<input type="checkbox"/> Partial Payments to Contractor
<input type="checkbox"/> Change Orders
<input type="checkbox"/> Liquidated Damages
<input type="checkbox"/> City's Role and Responsibilities
<input type="checkbox"/> Contractor's Role and Responsibilities |
|--|---|

Other: _____

I, _____, (*Name of Prime Contractor*) hereby acknowledge that I attended a pre-construction conference on the above-noted date, that all items listed were adequately reviewed at the meeting and that I fully understand all obligations and responsibilities allocated to me as prime contractor.

NOTICE TO PROCEED

(Date)

(Contractor)

(Address)

(City) , (State) , (Zip)

Re: _____
(Grantee)

(Project #)

(Project)

You are hereby notified to commence WORK on (Date) , 20 , in accordance with the Agreement dated (Date) , 20 , and you are to complete the WORK within consecutive calendar days thereafter. The date of completion of all WORK is therefore (Date) , 20 .

Owner

By: _____

Title: _____

Contractor

By: _____

Title: _____

NOTICE OF START OF CONSTRUCTION
--

To: ECD/Program Management

From: _____ (Grantee) _____

_____ (Project #) _____

Date: _____ (Date) _____

_____ (Project Name) _____, located at _____ (Address) _____, awarded to
_____ (Name of Contractor) _____ on _____ (Date) _____, will begin construction on
_____ (Date) _____. Construction will be completed by _____ (Date) _____. The number of
the applicable wage decision is _____ (Wage Decision Number) _____. _____ (Grantee)
has designated _____ (Name) _____ as responsible for compliance with labor standards
and equal opportunity provisions.

**Department of Labor
Wage and Hour Division**

INSTRUCTIONS FOR COMPLETING PAYROLL FORM, WH-347

General: The use of the 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, Parts 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 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 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 other fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

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.

Column 2 – Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Parts 3 and 5.

Column 3 – Work Classifications: List classification descriptive of work actually performed by employees. Consult classification 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 or hours so worked is maintained and shown on submitted payroll by use of separate entries.

Column 4 – Hours worked: On all contracts subject to the Contract Work Hours Standard Act enter as overtime hours worked in excess of 8 hours per day and 40 hours a week.

Column 5 – Total: Self-explanatory.

Column 6 – Rate of Pay, including Fringe Benefits: In straight time box, list actual hourly rate paid the employee for straight time worked plus in 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 computing overtime. See "Fringe Benefits" below. In overtime box shown 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 or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962. In addition to paying no less than the predetermined rate for the classification 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 in the wage decision made part of the contract. See "FRINGE BENEFITS" below.

FRINGE BENEFITS – 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 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).

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 a 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).

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 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 fringes 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 column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

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.

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 deductions under "Other" column; show actual total under "Total Deductions" column: and in the attachment to the payroll describe the deduction 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.

Column 9 – Net Wages Paid for Week: Self-explanatory

Totals – Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

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 USV 1001, namely, possible imprisonment of 5 years or \$10,000.00 fine or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Space has been provided between item (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.

PAYROLL

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

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



NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1215-0149 Expires: 03/31/2006
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
-------------	-----------------	----------------------	-------------------------

(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	
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We estimate that it will take an average of 56 minutes to complete this collection of information, including time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U. S. Department of Labor, Room S3502, 200 Constitution Avenue, N. W., Washington, D. C. 20210.