

LABOR STANDARDS

I. PURPOSE

- This chapter presents some of the many procedures and requirements that sub-recipients must follow when they engage in or procure construction services. Construction involves the employment of laborers/mechanics and includes, but is not limited to, capital improvements, commercial revitalization, demolition, excavation, clearing and grubbing, and alteration.

II. GENERAL

- Prior to beginning any construction activity, including procurement thereof, sub-recipients must contact DHCD to determine the correct federal procurement procedures to be followed and to receive federally required procurement documents and forms.
- Close adherence by contractors to required procedures will ensure a minimal number of enforcement problems and violations, safeguard federal statutory rights, and expedite construction. The following is a general flow schedule for Davis-Bacon applicable projects:
 - Davis Bacon Applicability Test
 - Government Entity involved
Construction or alterations/repairs (including paint/
decorating of public buildings)
 - Employment of laborers/mechanics
 - CDBG/HOME funds used (full or partial)

III. STAGES OF CONSTRUCTION

- The following stages are guidelines to successfully complete construction projects that are Davis-Bacon applicable:

A. Pre-Bid Stage

- 1) DHCD's executed contract tested for Davis-Bacon applicability.
- 2) DHCD reviews construction plans, specs, and timeline.
- 3) Sub-recipient sends in Notification of Intent to Bid form to DHCD.
- 4) Bid Requirements package issued to agency by DHCD.
- 5) Project Manager requests Davis-Bacon Wage decision.
- 6) Sub-recipient develops bid package (includes Bid Requirements).

- 7) Project Manager reviews and approves bid package.
- 8) Project Manager releases Wage Determination and required Request for Bids (RFB) advertisement wording to Agency.
- 9) Project Manager reviews and approves RFB advertisement.
- 10) An optional Pre-bid conference can be held, if needed.
- 11) Sub-recipient receives bids and logs them in as received.
- 12) Sub-recipient opens bids (Project Manager must be present).
- 13) Sub-recipient evaluates bids, selects bidder, submits process and justification to Project Manager.
- 14) Project Manager reviews successful bidder package/subcontract and subcontractor against debarment list.

B. Post-Bid Stage

- 1) Sub-recipient issues letter of award to successful bidder.
- 2) Sub-recipient notifies contractor to attend Pre-construction Conference.
- 3) Project Manager conducts Pre-construction Conference.
- 4) Project Manager ensures submittal of insurance, bonding, and permit requirements.
- 5) Sub-recipient issues notice to proceed.
- 6) Sub-recipient receives the Notice of Commencement.
- 7) Sub-recipient receives list of sub-contractors and submits it to Project Manager.

C. Construction Stage

- 1) Labor Documentation/Administration as follows:
 - One Time Submittal, Weekly Submittal, Monthly Submittal
 - Contractor's Certificate
 - Subcontractor's Certification Weekly Payroll (WH 347)
 - Monthly Utilization Report
 - Statement of Compliance
 - Progress Report
 - Bidder's Section 3 Documents
 - Monthly Section 3 Report
 - Release of Lien
 - Subcontractors On Site
 - Progress Photos
 - Certificate of Completion Report Timeline Updates
 - Certificate of Occupancy
 - Project Manager conducts labor interviews
 - Project Manager reviews contractor's draws
 - Contract close-out-release of retainage

IV. PREBID PROCEDURES

A. NOTIFICATION OF INTENT TO SOLICIT

Prior to issuing an Invitation for Bid (IFB) or a Request for Proposals (RFP), contractors must complete a Notification of Intent to Solicit Bids or Proposals and submit it to DHCD. This notification must be received by DHCD thirty calendar days prior to the anticipated bid opening date. This allows DHCD sufficient time to obtain from U.S. HUD an appropriate wage decision.

B. ADVERTISEMENT

Upon receipt of the appropriate wage decision from DHCD, contractors are advised to advertise the availability of the IFB or RFP. The advertisement must run for a minimum of two consecutive weeks. The advertisement must be placed in a minimum of three sources of general circulation such as *The Miami Herald* and the *Dodge Report*. The advertisement must also contain required federal language.

C. REVIEW OF BID PACKAGES

All bids or proposals received by contractors must be stamped indicating date and time of receipt. They should then be logged in showing bidder's name, address, date and time of receipt. Bids must be opened on the day and time specified in the IFB or RFP. All bids or proposals that arrive after the deadline for submitting responses to the IFB or RFP are to be returned to the bidder with a letter indicating the time of arrival and that the bids or proposals cannot be considered because they did not meet the submission deadline as stipulated in the IFB or RFP.

D. EVALUATION OF RESPONSES

The evaluation of bids should be performed by individuals having experience and knowledge in the areas and requirements for which an award will be made. Generally, the contractor, assigned consultant/engineer, and Project Manager would be on the evaluation team.

V. CONTRACT AWARD PROCEDURES

A. Awarding the Contract

Sub-recipients must send a notice of the award to all respondents to the IFB or RFP and to other interested parties who requested information regarding the IFB or RFP.

B. Preconstruction Conference

In coordination with DHCD, sub-recipients must schedule and conduct a preconstruction conference. This conference is to be held a minimum of ten calendar days prior to the release of a Notice to Proceed.

The purpose of this conference is to provide information and to distribute materials that will help the sub-contractor and sub-recipient to understand what they must do to earn their funds and to avoid violating labor standards and possible civil or criminal prosecution.

C. Notice to Proceed

Sub-recipients must ensure that subcontractors meet all pre-award requirements prior to issuing a Notice to Proceed.

D. Employee Interviews

Sub-recipients must ensure that on-site job interviews of workers are conducted and that the interviews are in compliance with federal labor standards. At least five percent to twenty percent of each position classification must be interviewed.

E. Construction Licensing Requirements

Miami-Dade County has very specific licensing requirements for any party doing construction work. When Miami-Dade County through DHCD enters into a contract with any party, there is the presumption that all transactions will be legal. Therefore, it behooves sub-recipients to determine if the individual or business with which they intend to subcontract for construction work has the required licenses. Per the County Attorney, DHCD is not legally obligated to pay any invoices for construction if the correct licenses are not in place. Furthermore, Miami-Dade County imposes penalties and/or fines for violation of these requirements.

The party doing construction work must have, as a minimum, an occupational license. In addition, the party must also have a certificate of competency or a general contractor's license. To learn of the correct type of license needed and any other related information, sub-recipients should call the Miami-Dade Building and Code Compliance and Planning and Zoning Department.

F. Debarred, Suspended and Ineligible Sub-Contractors and Sub-Recipients

Federally awarded funds cannot be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or sub-recipient during any period of debarment, suspension or placement of ineligibility status. Sub-recipients should check all contractors, subcontractors, and lower tier contractors against the Federal publication which lists debarred, suspended and ineligible contractors.

DAVIS BACON

- It is imperative to maintain accurate files for Davis-Bacon projects. The following is a minimum for documentation files that will be reviewed by the Project Manager during monitoring visits:

1. EXAMPLES OF KEY DOCUMENTATION

- Copy of Wage Rate Request
- Copy of Wage Rate, along with any additional classification
- Bid/Contract Documents with Labor Standards Provisions included
- Contractor Eligibility Verification
- Ten-Day Call Verification (for changes to Applicable Wage Decision)
- Pre-construction conference minutes/sign-in sheet
- Payrolls, with evidence of their review
- Notice of Start of Construction
- Employee interviews
- Evidence of violations and steps taken to resolve these
- Final Wage compliance reports
- Monthly employment utilization reports, where applicable

A. Labor Standards

- The Davis-Bacon Act, the Contract Work Hours and Safety Standards Act and the Copeland (Anti-Kickback) Act apply to construction being assisted with CDBG or HOME funds except that housing rehabilitation projects with less than eight units for CDBG and 12 units for HOME (either rehabilitation or new) do not - trigger these requirements. The Fair Labor Standards Act (minimum wages) will be applicable in most cases, whether or not the previous acts apply.
- Davis-Bacon and Related Act as amended (40 USC 3141 et. seq.) ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.
- Contract Work Hours and Safety Standards Act, as amended (40 USC 3701 et. seq.)) provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- Copeland (Anti-Kickback) Act (40 USC 3145) governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.
- Fair Labor Standards Act of 1938, As Amended (29 USC 201, et. seq.) establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work and establishes child labor standards.

B. Davis-Bacon Compliance Requirements:

- Appoint a Labor Standards Officer - Each locality must designate a Labor Standards Officer who will be responsible to ensure compliance with all applicable labor standards requirements and to act as liaison with the State in this regard. The name, address, and telephone number of this person must be submitted in writing to US HUD. Most of the tasks described in the remaining portion of this section will be carried out by the Labor Standards Officer.
- Wage Determination - The Labor Standards Officer must obtain the wage decision for those projects which fall within Davis-Bacon thresholds (generally 8 or more units). In order for the proper wage rate to be issued, the wage rate request must classify the construction project as one of two categories of construction. If the apartment building is five or more stories high, it is classified as building construction. If there are four or fewer stories, it is classified as residential construction. Since the wages vary substantially between these two rates in most cases, it is critical that the number of stories be included in the project description section of the request.
- If a General Wage Decision is issued, it may be modified or superseded at anytime. Project Wage Decisions, on the other hand, have definite effective and expiration dates clearly marked on them. Please note that a contract must be awarded prior to the expiration date.
- Bid/Contract Package Requirements - The localities should strongly encourage the use of an open and competitive bidding process. All special conditions being placed upon the bidders must be included in the bid package and construction contract. This means that the package should, at minimum, include the labor standards requirements, applicable wage rates, contractor certifications and any special conditions (e.g., Section 3 requirements).
- Ten-Day Call - No more than ten days prior to the bid opening and/or award of the contract, the Labor Standards Officer must contact the State to determine if the wage decision(s) included in the bid packet are still current. Following this call, the Labor Standards Officer will send the locality a confirmation of this call.
- This call must be made no more than ten calendar days prior to the bid opening, but must still allow at least seven calendar days before the bid opening to allow for any necessary addendum to the bid package, if the wage rates have been modified or superseded since they were issued.
- Failure to call and to make the necessary adjustments if the rates have been modified/superseded can result in improper wage rates being considered in the bidding process and can be expensive to the contractor, program administrator, and property owner.

- ❑ Verify sub-contractor Eligibility - Each construction subcontractor must be verified by the program administrator for eligibility to contract on federally assisted programs (see next section below). A sub-contractor eligibility verification form must be placed in the file prior to the award of any contract. This requirement applies even on those projects which do not fall under the Davis-Bacon and related acts. The program administrator may call the Labor Standards Specialist and receive this clearance. This will not, however, remove his or her obligation to submit the written sub-contractor eligibility form to the file.
- ❑ Preconstruction Conference - The pre-construction conference is held after the contract award, but prior to the issuance of the "Notice to Proceed." Those attending should include the Project Manager, property owner, developer, program administrative staff, general contractor and subcontractors. The conference should cover specific construction concerns: the time frame for completion of the project, payment requirements, and thorough instructions relative to all labor standards requirements. The applicable forms and posters should be given to the sub-contractor, along with instructions for their completion. NOTE: HUD generally requires that minutes and sign-in sheets from this conference be maintained.
- ❑ Submission of Payrolls and Other Requirements - Payrolls must be submitted weekly, with the first one titled "#I initial" and the last one labeled "Final." The "week ending" period must be clearly marked and all data on each employee must be entered on the first payroll. Any supplemental or corrected payrolls must be submitted in like manner. Payrolls must be submitted to the locality no later than seven calendar days following the end of the work week.
- ❑ Permissible and impermissible payroll deductions should be discussed. Permissible payroll deduction include:
 - those required by law (Payroll deductions other than those required by law must be submitted to the program administrator using the payroll deduction authorization form)
 - loans to the worker, without interest
 - purchase price of U.S. notes, stamps or bonds
 - contributions to governmental; quasi-governmental or charitable organizations; and union fees
- ❑ Posters must be posted, on the job site at all times that workers are present.
- ❑ Notice of Start of Construction - Following the pre-construction conference and the issuance of the Notice to Proceed, the locality shall submit a Notice of Start of Construction to the State.
- ❑ The Project Manager is responsible for the following monitoring responsibilities and reports:

- Interviews of the workers must be conducted on regular basis and should include a broad sampling of the work classifications being employed on the project for a Record of Employee Interviews form.
 - On-site inspections should be made to ensure that the required notices are being posted.
 - Weekly payrolls should be reviewed and compared with employee interviews and wage rates to verify compliance with applicable labor standards requirements (e.g. payment of minimum wages, payment of overtime, no ineligible deduction, etc.).
 - Once the project is completed, a Final Wage Compliance Report shall be filed with the State.
- For each construction contract, the sub-recipient should maintain a file with the following documentation:
- copy of wage rate request
 - copy of wage rate, along with any additional classifications
 - bid/contract documents with labor standards provisions included
 - sub-contractor eligibility verification
 - ten-day call verification
 - pre-construction conference minutes/sign-in sheet
 - payrolls, with evidence of their review
 - notice of start of construction
 - employee interviews
 - evidence of any violations and steps taken to resolve them
 - final wage compliance reports; and
 - monthly employment utilization reports where applicable
- Violations of the labor standards requirements must be corrected. Failure to pay sufficient overtime wages will result in the assessment of liquidated damages in the amount of \$10 per day per violaton. Only HUD and the Department of Labor are authorized to reduce or waive these liquidated damages. The contractor must be notified of his liability. Then, if appropriate, he or she may request a waiver.

F. Debarred, Suspended and Ineligible Sub-contractors and Sub-recipients

- Federally awarded funds cannot be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or sub-recipient during any period of debarment, suspension or placement of ineligibility status. Sub-recipients should check all contractors, subcontractors, and lower tier contractors against the Federal publication which lists debarred, suspended and ineligible contractors at <http://www.epls.gov>

