**Labor Rate Administration Procedures**

These procedures will be used whenever the value of a construction or maintenance contract
will exceed $2,000, without regard to whether the job will be done as a small purchase using a
purchase order or as a sealed bid using a contract.

**Initial Wage Rate Determination Procedure**

1. When the Board of Commissioners adopts the CGP and Operating Budgets, staff will analyze the work to be contracted as a result of those budgets to determine if the value of each individual contract/purchase order will exceed $2,000, and, for those contracts/purchase orders, the job classifications needed for work planned for each contract/purchase order.

2. Next, staff will determine whether the work will take place at HA properties that are subject to Davis Bacon and HUD-determined wage rate rules, since HA owns properties that are subject to neither of these regulations.

1. At all public housing properties, either Davis Bacon or HUD-determined wage rates will be used for work costing more than $2,000, depending on whether the work to be done is construction/rehabilitation (Davis Bacon) or maintenance (HUD-determined).
2. At Low Income Housing Tax Credit (LIHTC) properties, Davis Bacon wage rates will be used for construction/rehabilitation projects if the properties have
* Project-based vouchers;
* Used HOME or CDBG funds for their construction;
* Have any ACC (public housing) funding
1. At USDA rural rental housing properties, Davis Bacon is used for construction/rehabilitation.
2. FHA properties with project-based Section 8 use Davis Bacon wage rates for construction work.

3. At properties that are subject to neither Davis Bacon nor HUD-determined wage rates, if the work will employ state funding (and no federal funding), the state prevailing wages will be used however HUD does not monitor these actions.

4. At HA-owned LIHTC properties that meet none of the qualifications in 2.b above, HA shall follow its procurement policies

**Obtaining the Wage Decisions appropriate to the planned work**

When the likely contracts funded under public housing operating and capital fund budgets have been identified, staff will perform the following tasks for each contract/purchase order:

1. For small jobs, estimate the value, based upon past experience, to determine those procurements that will exceed $2,000 in value;
2. Make a determination about whether a job is maintenance or

construction/rehabilitation. This is sometimes obvious — a lawn-mowing contract or making vacant units ready for re-occupancy will almost always be maintenance but if the unit has suffered major damage or HA decides to replace the kitchen or bath

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while it's vacant, it would be rehabilitation. For other work the decision is not clear cut — for example the Davis Bacon guidance cites "redecoration" as subject to the Davis Bacon rates, but repainting vacant units IS redecoration and most PHAs would consider that to be a maintenance function.

As is noted in the HUD letter of findings, the HUD-determined wage rates applicable to maintenance work will usually be lower than the Davis Bacon rates, saving HA money. When in doubt, consult with the HUD Industrial Relations Specialist. Obtain an answer by email and copy the file.

1. For each job, construction or maintenance, develop a list of the job titles of workers who will be engaged by general contractors and subcontractors;
2. Begin gathering current wage rates in County for the job titles and work categories identified and provide this information to the HUD Labor Office.
3. Contact neighboring PHAs in County to see if they have already obtained wage decisions that HA could use.
4. Submit the wage data collected to the HUD Industrial Relations Specialist and request the wage decisions to cover all the work planned for the year.
5. When emergency work is needed for which money was not budgeted, this process may trigger requests for additional wage decisions if warranted by the type of emergency work needed.

**Preparing Procurement Documents to include Labor Rate Decisions**

The type of procurement used will depend on the value of the contract. All jobs between $2,000 and the State bidding threshold are "small procurements", and typically are authorized by purchase orders rather than contracts.

Jobs that will exceed the State bidding threshold require the full sealed bidding process. Regardless of the type of instrument used, all procurements/purchase orders/contracts over $2,000 in value that will involve non-employees working for HA must:

1. Include as part of the purchase order or contract, a section dealing with labor rates, including the appropriate labor standards clauses, the contractor's responsibility for compliance (including compliance by any subcontractors), and either the Davis Bacon or HUD-determined wage rates applicable to the job;
2. State the responsibilities of the contractor and all his subcontractors to pay the wages set forth in the contract/purchase order documents and to submit regular certified payrolls covering the entire job;
3. Be clear about the fact that HA will be performing regular interviews with all workers on the job both to determine whether they are doing work in the proper classification and whether they are being paid the correct hourly rates for their work and benefits;
4. Explain that the final certified payrolls will be scrutinized to ensure that all workers were paid the correct wages for the work they actually performed on the job and, should that not be the case, that the contractor will be responsible to make restitution to anyone underpaid.

**Setting up the files**

**2**

1. Labor rate information for purchase orders will be filed with the PO in the files of the property where the work takes place;
2. Sealed bid contracts will have all labor rate data filed with the contract itself in a binder for each contract.
3. Regardless of the type of procurement it must be easy to find the relevant labor rate data for every job and that data must be complete and correct.
4. The supervisor of the employee charged with setting up and maintaining the files will pull files on a regular basis to ensure that all records are clear, complete and correct.

**While work is underway**

1. In the course of inspecting the work, HA staff will conduct regular weekly interviews with all workers on all jobs using the HUD-11 forms. Data to be collected will include:

* The worker's name;
* The worker's job title;
* The nature of the work being performed and whether it matches the job title;
* The hourly rate being paid to the worker;
* The employee benefits the worker receives
1. Each week when the certified payrolls are submitted, HA staff will compare the payroll information to the data collected from worker interviews.
2. If discrepancies are detected between what a contractor/subcontractor submits on the certified payroll and data from interviews, HA staff shall immediately contact the contractor to resolve any questions.

**Job Close-out**

1. Promptly after HA has signed off on the contract completion and received the final certified payroll from the general contractor and all subcontractors, HA staff will perform a final review of the collected HUD-11 interview forms and the certified payrolls to identify any possible discrepancies between what the contract workers report being paid and the approved labor rates.
2. At this point HA will be holding the standard retainage on all contracts and will not have made the final payment on any purchase orders. This is important since it provides incentive for the contractor's cooperation.
3. If there is are any instances in which the contractor or subcontractors have paid an employee less than the approved wage rate from the contract documents, HA will call in the contractor and explain that the final payment must be held until the labor rate discrepancy is resolved.
4. When the contractor proves that all workers have been fully paid as agreed, HA may release the retainage or make the final payment on the purchase order.

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 **County Housing Authority
Labor Rate Administration Policy**

**Purpose of the Policy**

The purpose of this Labor Rate Administration Policy is to ensure that County Housing Authority (HA) contractors pay the correct wage rates to all employees who work on jobs for HA with a value above $2,000.

Since HA owns several different types of housing financed in a variety of ways, the same requirements do not apply to all HA properties. Further, the type of work being performed at eligible properties will be the determining factor in deciding whether Davis Bacon wage rates or HUD-determined wage rates should be used in the contracting documents and pay/payroll monitoring process.

**Coordination of Labor Rate Administration with Budgeting and Procurement**

Labor rate administration is one of many components of procurement since it expressly covers wages paid to non-employees working on jobs for HA. Thus, like all procurement-related work, it starts with the adoption of operating and capital budgets.

**Budgeting and Procurement**

Every budget is a plan — it reflects the HA administration's thinking about the work to be undertaken in the coming fiscal year, with full recognition that emergencies occur and budget revisions may be needed.

1. **CGP:** The annual capital budget is based upon the 5-year Capital Plan required by law, as modified annually by changing conditions at the public housing properties. Generally, the work performed under the Capital Grant Program (CGP) will be major projects and will employ Davis Bacon wage rates. The capital budget is prepared far enough in advance of the letting of contracts and actual performance of work to allow plenty of time to obtain the appropriate wage rates for the labor classifications needed.
2. **Operating Budget:** The operating budget is not based upon a five-year plan, but rather reflects the operational realities at the time it is prepared (before the beginning of HA's fiscal year). As with the capital budget, it reflects plans for maintenance work in the coming year, some of which may be performed by contractors. The work to be done by contractors (as opposed to staff) will usually be subject to HUD-determined wage rates.

**The labor rate requirements to which properties are subject:
Properties with to Davis Bacon wage rates**

The following properties will use Davis Bacon wage rates for major construction and reconstruction work:

* All conventional public housing properties; and
* Properties with project-based vouchers; and

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* FHA properties (221(d)(3) and (d)(4), 236, 202, 811) with Section 8 contracts; and
* USDA Rural Rental Housing properties; and
* Low Income Housing Tax Credit properties **only** if:
* They were built on land owned by HA that conveys real estate tax exemption to the property; or
* They used any HOME or CDBG funds in the development; or
* They used any public housing CGP funds in the development.
* A LIHTC property without any of the above funding **would not** be subject to Davis Bacon rules because LIHTC is not considered federal housing assistance.

**Properties with HUD-Determined wage rates**

Only public housing properties are subject to HUD-determined wage rates

**Properties subject to Pennsylvania state wage rules**

State funded construction/rehabilitation projects valued at $25,000 or more (without any federal funding) are required to pay state prevailing wages.

**Determining the correct type of wage rate for each contract**

HA procures a wide variety of goods and services and is subject to the requirements of federal and state procurement laws. When using any federal funds (e.g. public housing operating funds, capital grant funds) HA is required to comply with the over-arching federal requirements in the OMB Super-circular, with HA's own procurement policies and procedures and with Pennsylvania state law (which establishes the bidding threshold).

The contracts to which labor rate rules apply are those for more than $2,000 under which successful bidders provide work to HA, as opposed to contracts for materials or professional services.

The decision about whether Davis Bacon or HUD-determined wage rates will be used for a contract to perform work depends on the type of work to be done.

* Construction, reconstruction, redevelopment, alteration (e.g. converting a regular public housing unit to a fully accessible unit) would all fall under the Davis Bacon wage rates.
* By contrast, maintenance contracts are subject to HUD-determined wage rates. Examples of work that would use these rates would include making ready vacant units, performing routine property maintenance under contract instead of hiring maintenance staff, hiring a heating firm to winterize all furnaces, and carrying out roof repairs (roof replacement is reconstruction).

**Establishing the wage rates (whether Davis Bacon or HUD-determined) prior to procurement**

Whether procurement is through sealed bidding or uses a purchase order under the small purchases threshold, every job that will cost more than $2,000 must have the correct wage requirement wording binding the successful bidder to pay workers their appropriate wages and benefits.

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This means that HA must either plan its procurements far enough in advance to have the appropriate wage decisions on hand to include as an integral part of the contract or purchase order or, in the case of emergencies (which happen to PHAs with older properties) contacting the HUD labor-relations staff by phone to obtain the wage rate decisions as quickly as possible.

**Preparing the procurement**

HA will assume that all contracts for work, whether construction/reconstruction or maintenance will require full labor rate administration:

* Including in the contract documents the appropriate labor standards clauses and either Davis Bacon rates for the construction/reconstruction work or HUD-determined rates for maintenance work;
* Performing regular interviews with the workers on the job to ascertain their job titles, determine whether the work they are doing matches the job title, and what they are being paid;
* Collecting and reviewing certified payrolls for every week the contractor is performing work;
* Performing a final review and analysis to determine whether the contractor must make restitution (back payments) to any workers because they were not paid the correct wages for their jobs or because they were performing work at a higher level than the job title suggested (e.g. a Laborer installs cabinets)
* Maintaining all files in a condition suitable for review

HA will include labor rate compliance language in all contracts for work (including purchase orders) and will furnish the successful bidder with both the forms to be completed (WH-347 payroll report, for example) and will provide training to first-time contractors in the labor rate requirements.

**During the work**

While the contracted work is underway, regardless of whether it is construction or

maintenance work, HA staff will conduct regular interviews with workers on the job. These interviews will be documented by use of the HUD-11 form.

Each interview will ascertain:

* The worker's job title;
* The actual work being performed — does it match the job title?
* The hourly rate the worker is being paid;
* The employee benefits the worker receives.

In addition, HA will collect from each contractor signed, certified and numbered weekly payrolls which will be compared to both the information collected in the worker interviews and the wage rate determinations applicable to the contract. The general contractor is responsible for submitting the signed original payrolls of all the subcontractors.

**Contract completion**

When the contract is complete, the contractors will have submitted a "final payroll" and HA staff will review the results of all their labor rate compliance interviews and payroll reviews and will make a final determination that the contractor has or has not achieved labor rate compliance.

If there is a finding by HA that the contractor has either used the wrong job classifications or has paid any worker less than the wage rate stated in the contract, the contractor will be required to make restitution to the affected worker(s) so that before the contractor collects any retainage held by HA, the workers have been correctly compensated.

**Record maintenance**

HA is responsible for maintaining clear and understandable records demonstrating its compliance with all labor rate requirements.

For contracts under sealed bids, a binder will be maintained for each contract and a tab under each binder will contain all the interview reports and payrolls.

For contracts issued through purchase orders, a file by contract type and property name will contain all the information related to wage rates, interviews and payrolls.

This approach will make it possible for HA to demonstrate its compliance to any auditor or reviewer.

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**Federal Standards Compliance Plan**

Date: November 13, 2017

Client: Housing Authority

Project: Federal Labor Standards Compliance Plan for HUD

Project Number: PDCATI 13

On behalf of the Housing Authority ------ we have formulated a Federal Labor Standards Compliance Plan. This plan has been developed to ensure federal labor standards compliance for all contracts. The system ensures that property contract forms, wage decision, and eligibility checks are performed. The system ensures that all federal labor standards will be enforced and that the contracting process will be compliant with the federal labor standards. Outlined below are the tasks that will be performed under HA's Federal Labor Standards Compliance Plan.

1. **Davis-Bacon Wage Determination for Bidding**

The bidding documents will be updated with the latest Davis-Bacon Wage Determination before bidding is advertised for the project. If a significant amount of time occurs between the development of the bidding documents and when the project is advertised for bid, an additional quality check of the documents will be conducted within seven (7) days prior to the advertisement. The additional quality check will ensure that all wage rates and supporting documents comply with the federal labor standards.

1. **Contract Review of Wage Rates**

The field inspector will review the contract wage rates. Reviewing the wage rates will ensure the rates in the contract match the proper Davis-Bacon Wage Determination.

1. **Payment Certificate Verification**

When a contractor submits a payment request, the contractor must submit certified payrolls. The rates in the contract will be checked against the certified payrolls for accuracy.

 **Housing Authority**

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Federal Labor Standards Compliance Plan

**4. Random Interviews for Wage Rates**

On pay day, the field inspector will randomly select employees and ask the following information:

1. Name
2. Classification
3. Hours worked during pay period
4. Hourly rate
5. If benefits are paid into a plan or as cash
6. Benefit rate

These wage rate checks will continue throughout the construction of the project on a random basis and filed with the construction management project documents. After employee interviews are conducted, findings are compared with the certified payroll to ensure job activities match classifications and wage rates that are paid. The inspector will notify management of any discrepancies.

**5. Electronic and Paper Filing**

All documents related to the contract will be filed as a hard copy and an electronic copy for record keeping. A hard copy will be kept with the HA to provide improved accessibility to project documents. The following documents (included but not limited to) will be filed: payroll documents, employee interview documents, payment certificates, Davis-Bacon Wage Rate Determination document, and SAM search results.

 **Housing Authority**Federal Labor Standards Compliance Plan

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 **HOUSING AUTHORITY OCTOBER 2018**

**PLANNING AND CONSTRUCTION DEPARTMENT
STANDARD OPERATING PROCEDURE**

**Construction and Maintenance Contracts**

**Contract administration including: prepare and /or review bid documents, advertise projects for bid, pre-bid site visits, prepare and distribute addenda, conduct bid openings, related meetings and construction inspection throughout the project as detailed below.**

**Bid Documents**

**Drawings and/or specifications shall be prepared either in-house or by an Architectural/Engineering firm. The Authority shall regularly check for updated HUD forms and incorporate them into the specification book. The appropriate HUD General Contract Conditions and wage determination, retrieved from the Department of Labor's Davis Bacon website, shall be included. Wage decisions shall be checked 10 days prior to the bid opening date to confirm that there have not been any updates. Updated wage decisions shall be sent to all contractors as an addendum.**

**Advertising**

**Invitation for Bids shall be advertised once a week, for a minimum of 2 weeks, in the local newspaper. A list of contractors and/or vendors that received bid documents shall be kept. Addenda, if required, shall be faxed to the contractors on the bidder's list. Addenda confirmation by the contractor is required.**

**Bid Opening**

**A public bid opening shall be held at the time and place specified in the Invitation for Bid. All bids shall be initialed and marked with the date and time that they were received. The bid opening shall be attended by at least 2 HA employees. All attendees shall sign in. If only 1 responsive bid is received, and unless it is in the best interest of the Authority to award it, the bid shall be rejected and the contract re-advertised. If only 1 responsive bid is received after the 2nd bid opening, the award may be made if the price can be determined to be reasonable.**

**Low Bidder**

**The bid documents from the low bidder shall be reviewed for completeness, correctness, and to determine that the bid is responsive. References shall be checked for bidders that have no previous work history with the Authority. Bids that have incorrect or are missing bid bonds shall be rejected. The low bidder shall be checked against the excluded party and debarred contractor's list.**

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**Board Approval**

**A recommendation, along with the bid tabulation sheet, shall be forwarded to the**

**Executive Director for review and approval.**

**Contracts, Bonds and Insurance**

**The contractor shall provide the required insurance certificate, performance and**

**payment bonds before the contract can be executed.**

**HUD Forms**

**The Authority shall provide the necessary HUD forms to the contractor, or at the contractor's option, he may obtain them from the HUD website. The Authority shall regularly check for updated forms and provide information about such updates to the contractor.**

**Pre-construction Meeting**

**A pre-construction meeting shall be held with the contractor and appropriate HA staff. Items such as construction related questions, contracting issues, subcontractors, submittals, scheduling, resident coordination, prevailing wages, contract time period and liquidated damages will be discussed with the contractor. The official start date to be listed on the Notice to Proceed shall be established. An original and 3 copies of the Notice to Proceed shall be sent to the contractor.**

**Submittals**

**The contractor shall provide submittals, shop drawings, or samples, as required, to the Authority prior to ordering any material. Submittals shall be reviewed by the architect (where applicable) and HA staff. The Executive Director's signature shall indicate final approval.**

**Inspections**

**Construction work shall be inspected by Authority staff a minimum of once a day, or more often depending on the nature of the work. A daily inspection report shall be maintained by the inspector on an approved form. The following information shall be recorded during the site inspection:**

**Date of inspection**

**Time(s) of inspection**

**Weather conditions**

**Work force (by trade)**

**Activities noted during visit**

**Progress noted since the previous days visit**

**Pertinent material deliveries**

**Equipment (necessary for specialized tasks)**

**Test results (when a separate report is not required)**

**Potential causes for delay, if any**

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**Payrolls, Prevailing Wages, and Wage Interviews**

**The appropriate wage decision shall be included in the specification book. Certified payrolls shall be submitted by the contractor on a weekly basis. During site visits, the inspector shall familiarize himself with the workers, the tasks they are performing and their subcontract status (if applicable). If unsure, the inspector shall ask the workers their names, job duties and employer. The observed on-site job duties shall be compared with the worker's classification on the payrolls. Payrolls shall be reviewed for correctness, completeness and fringe benefit contributions, where applicable. Payrolls**

**shall be initialed and dated after review.**

**The inspector shall perform wage interviews on all employees, using form WH347. Information from the wage interview shall be compared with the information on the payrolls. The contractor shall be notified of any underpayments, misclassified workers and other discrepancies.**

**Payment Requests**

**Payments to the contractor shall be made based on Form HUD-51001, Periodic Request for Partial Payment. Line items, quantities and amounts on the Periodic Request for Partial Payment shall correspond with the approved Form HUD-51000, Schedule of Amounts for Contract Payments.**

**The quantities and amounts billed for on the Periodic Estimate shall be verified by the Planning and Construction manager. Verification shall be based on a site visit, input from the construction inspector, daily inspection reports, or any combination of the aforementioned. Once the verification process is complete, the P&C manager signs the Periodic Estimate as the "Authorized Project Representative" and shall forward it to the Deputy Director for Maintenance and Construction for his review and approval. He shall then forward it to the Executive Director (Contracting Officer) for final approval. After it is approved by the E.D., the comptroller shall prepare the necessary forms, attain the appropriate approval signatures, and requisition the funds from LOCCS. Within 3 days of the electronic transfer from LOCCS, the check shall be released to the contractor.**

**Punch list**

**A punch list inspection shall be performed for each project. The written punch list shall include the date and project name, along with the items that need to be corrected. Once the items have been corrected to the satisfaction of the Authority, the punch list shall be signed and dated to that effect.**

**Close out**

**The contractor shall submit final documents, including the final pay request, certificate**

**and release, and operation and maintenance manuals, where applicable.**

**STANDARD OPERATING PROCEDURE/POLICY FOR LABOR STANDARDS**

**COMPLIANCE**

**PURPOSE &CONTENTS**

**The purpose of this Standard Operating Procedure/Policy is to ensure contractors and subcontractors are in compliance with federal and state labor laws and requirements. These procedures outline the requirements for Federal Labor Standards that must be followed when undertaking construction projects with Federal funds. The following topics are covered:**

**INTRODUCTION**

**There are two types of prevailing wage requirements operable in HUD Public Housing programs:**

1. **Davis-Bacon Act prevailing wages payable to laborers and mechanics employed on covered construction work; and**
2. **HUD-determined prevailing wages payable to laborers and mechanics relating to maintenance work (including non-routine maintenance work) in Public, Indian and Hawaiian housing operations, and architects, technical engineers, draftsmen and technicians employed in Public, Indian, and Hawaiian housing development;**
* **Maintenance contracts (including non-routine maintenance as defined at 24 CFR 905.200) greater than $2,000 but not more than $150,000 use HUD 5370-EZ Section II General Conditions for Non-Construction Contracts**
* **Maintenance Contracts (including non-routine maintenance work) greater than $150,000. Incorporate the clauses contained in HUD-5370 Section** I **and Section II, General Conditions for Non-Construction Contracts.**

**Routine maintenance** involves the regular upkeep and preservation of buildings, grounds, and facilities. This may include groundskeeping, janitorial work, patching and/or finishing of interior and exterior walls and other surfaces, and the preservation, inspection, and general upkeep of electric, plumbing, and heating and air-conditioning systems.

***Nonroutine maintenance.* Work items that ordinarily would be performed on a regular basis in** the course of maintenance of property, but have become substantial in scope because they have been postponed and involve **expenditures that** would otherwise materially distort the level trend of maintenance expenses. These activities also include the replacement **of** obsolete utility systems and dwelling equipment.

**Overview of the Labor Standards Requirements**

* **Construction work that is financed in whole or in part with Federal funds must adhere to certain Federal labor standards requirements. This document describes the policies and procedures that will be followed when undertaking construction projects with Federal funds to ensure compliance with the labor laws and requirements.**

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* Under the labor laws, the prime or general contractor is responsible for full compliance with applicable requirements, including all employers/subcontractors on the project. The

Housing Authority is responsible for the administration and enforcement of the

requirements to ensure compliance.

**Labor Laws and Requirements**

* The labor laws that may apply to Federally-funded construction work include the following:
* The **Davis-Bacon Act** (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) is triggered when construction work over $2,000 is financed in whole or in part with Federal funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area as determined by DOL. Davis-Bacon does not apply to the rehabilitation of residential structures on a property containing less than eight units or force account labor (construction **carried out by employees of the HA). HUD should be contacted if there is any situation where the applicability of Davis-Bacon is in question.**

**Property is not limited to a specific building. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project.**

* **The Copeland Anti-Kickback Act** (40 USC, Chapter 3, Section 276c and 18 USC, **Part** 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
* The **Contract Work Hours and Safety Standards Act** (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over

$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty ($10 per day per violation).

* **Section 3 of the Housing and Urban Development Act of 1968,** as amended requires the provision of opportunities for training and employment that arise through **HUD-** financed projects to lower-income residents of the project area. Also required is that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low- and very low-income persons residing in the area.
* **U.S. Housing Act of 1937 (USHA).** The USHA contains a provision requiring that maintenance laborers and mechanics employed in the operation of low-income housing be paid wages not less than prevailing wage rates determined or adopted by **HUD. The** USHA also requires the payment of not less than HUD-determined or—adopted wage rates to architects, technical engineers, draftsmen and technicians employed in the development of low-income housing.
* **Act 75: Pennsylvania's Construction Industry Employee Verification**

**Act** prohibits the employment of unauthorized employees; requires construction industry employers to verify the Social Security numbers of employees; and imposes

penalties. The Act goes into effect on October 7, 2020. All employers in the

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**construction industry in Pennsylvania will be required to use E-Verify, the federal government's program that allows enrolled employers to confirm eligibility of their employees to work in the United States.**

* **Pennsylvania Prevailing Wage Act Construction projects (construction,**

**reconstruction, demolition, alteration and or repair work** *other than maintenance work)* financed by a public body where the estimated cost is at least $25,000 require Pennsylvania prevailing wages under the Pennsylvania Prevailing Wage Act (43 P.S. §§ 165-1 through 165-17). The Housing Authority *has the responsibility of obtaining Pennsylvania prevailing wage rates from the Commonwealth, Department of Labor & Industry for* a *project. The public body must also include Pennsylvania prevailing wage rates in the contracts, notice for bids and advertisements.* **43 P.S. § 154-4;** 34 Pa. Code § 9.104.

* **NOTE: If Federal and State laws differ, HA must comply with the more stringent of the two.**
* **HUD has published two guides that are available for downloading from its web site on labor standards requirements. These documents are "Making Davis Bacon** Work: **A Practical Guide for States, Indian Tribes and Local Agencies" and "Contractor's Guide to Davis-Bacon: Prevailing Wage Requirements for Federally-Assisted Construction Projects."**
* **Demolition, by itself, is not considered to be construction, alteration or repair and therefore Davis-Bacon wage requirements are not typically triggered by demolition work, alone. If however, demolition work is part of a larger, planned construction project, then the demolition work is considered to be part of the overall project and is subject to Davis-Bacon wage requirements. Additional information regarding applicability of demolition work is addressed in Labor Relations Letter 2009-01, found** at:<http://portal.hud.dov/hudportal/documents/huddoc?i&DOC> 14999.pdf

**Additional information is available on HUD's Office of Labor Relations web site at** [**http://portal.hud.gov/hudportal/HUD?src=/program\_offices/labor\_relations**](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations) **and the forms referenced herein are available at HUDClips at** [**http://portal.hud.gov/hudportal/HUD?src=/program\_offices/administration/hudclips**](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips)

**Labor Standards Officer**

* **The Housing Authority will identify one staff person, known as the Labor Standards Officer (LSO), who is responsible for ensuring compliance with the federal labor standards. The LSO** *must* **undertake the following activities:**
1. **Obtain the applicable wage rates for each specific construction contract where Davis-bacon and Related Acts (DBRA) regulations apply that are greater than $2,000. Wage Decisions can be pulled at** [**www.beta.SAM.gov**](http://www.beta.SAM.gov)**;**
2. **Verify that the Contractor is eligible/has not been debarred prior to awarding the
contract via** [**SAM.gov**](http://SAM.gov) **(print proof of verification; keep as part of contract file);**
3. **Conduct weekly reviews of the payrolls to ensure that all employees are being paid in compliance with federal guidelines and that all other labor standards provisions are being observed i.e., job classifications and payroll deductions (See Payroll Checklist);**

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1. **The LSO or Maintenance Supervisor must conduct on-site visits to the project site and interview a proportion of the workers concerning their employment on the project using HUD -11. Employee interviews should be representative of all classifications of employees on the project;**
2. **Enforce the federal labor standards; and**
3. **Take corrective actions.**

**Bidding and Contracting Requirements**

* Once it is determined that a construction project is subject to Federal labor standards requirements, certain steps must be taken to ensure compliance. Specifically, HA must include all applicable labor standards language and the appropriate wage decision in construction bid and contract documents.

Davis- Bacon Wage Rate Decisions

* The Davis-Bacon wage decision that applies to a project contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work.
* The HA will obtain proper Federal wage rate decisions through the internet at [www.beta.sam.gov](http://www.beta.sam.gov). Federal wage determinations are generally issued for four categories: Building, Residential, Heavy, and Highway. It is important to understand the differences when determining which rate category to request to avoid paying wages from an inappropriate determination.
* **Building construction** generally includes construction, rehabilitation or repair that contain residential units over 4 stories or are commercial use; sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.

**Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings that are four stories or less, including incidental items such as site work, parking areas, utilities and sidewalks, unless there is an established area practice to the contrary.

**Heavy construction** is generally considered for all construction not properly classified as

highway, residential, or building. Water and sewer line construction will typically be categorized as heavy construction.

**Highway projects** include construction, alteration or repair of roads.

* **HUD** should be consulted if there are questions about properly identifying the type of wage determination and/or modifications.
* If a work classification that is needed for the project does not appear on the wage decision that will be used, the Contractor must request an additional classification and wage rate from HUD. Requests must be made in writing through the HA and must meet certain criteria to be approved. Requires submission of HUD-4230A. Requests which fail to meet HUD approval are forwarded to DOL for final determination.

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HUD Wage Rate Decisions

The HA will obtain HUD Wage Rates for its routine maintenance staff in accordance with the HUD established schedule of every 2 years in preparation of the Authority's operating budget.

The LSO will prepare and submit to HUD Regional Labor Manager:

1. HUD-Form 4750 (MWD Recommendation)
2. HUD-Form 4752 (MWR Survey for the 3 surveys
3. HUD-Form 4752 MWR Survey Summary for the wage rates for HA's maintenance staff

Upon receipt of HUD-Form 52158 from HUD approving the proposed wage rates, all documentation will be kept in a file.

For non-routine maintenance work with a value of $2,000 or greater, the HA will request the HUD-determined rates each year as provided on HUD-Form 52518. These HUD determined wage rates will be incorporated into all solicitations for non-routine maintenance work. If the work includes a classification not provided on the HUD-52168, the LSO shall contact the HUD Regional Labor Manager for an appropriate classification.

The LSO will conduct at least one

1. wage interview,
2. file review at the vendor's office(s), or
3. require the vendor to submit certified payrolls for a random number of weeks to gauge compliance.

All documentation must be maintained for 3 years following the completion of the contract by the HA and vendor(s).

**Labor Clauses and Wage Decisions in Bid and Contract Documents**

* The labor clauses, which are contained in HUD-4010, appropriate 5370, 5370-C or 5370-EZ, and the applicable wage rate decision (and any additional classifications) must be a physical part of the bid package. The labor clauses obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and provide remedies and sanctions should violations occur.
* For Contracts entered into pursuant to competitive bidding:
* General wage decisions shall be locked-in on the date bids are opened provided that the contract is awarded within 90 days after bid opening. If the contract is awarded more than 90 days after bid opening, the HA must update the wage decision as of the date of award unless an extension is obtained.
* Ten days prior to bid opening, the HA will check to see if the wage decision has been modified. If so, the HA will notify all potential bidders appropriately in conformance with the Authority's procurement procedures.
* For Contracts entered into pursuant to negotiations:
* If the HA procures construction, renovation or major repair work through a

negotiated contract (contract(s) below the sealed bid threshold), the wage decision is locked-in at contract award or construction start, whichever occurs first.

**Enforcement of Requirements during Construction**

**During construction, the HA is responsible for enforcing the labor standards requirements described in this SOP. This includes good construction management techniques (e.g., pre-**

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**construction conferences, issuance of notices to proceed and payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.**

**Pre-construction Conference**

* **The HA will hold a pre-construction conference (although not required in order to comply with Federal Labor Standards) prior to the start of work to review contractual requirements, including labor, and performance schedules.**
* **The HA will use this opportunity to clearly present the Federal statutory compliance requirements as well as performance expectations. Items that will be covered at the pre-construction conference include, but are not limited to:**

**Provide and review with the contractor a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." This guide can be downloaded from at:** [**http://vvww.hud.gov/offices/adm/hudclips/guidebooks/HUD-LR-4812/4812-LR.pdf**](http://vvww.hud.gov/offices/adm/hudclips/guidebooks/HUD-LR-4812/4812-LR.pdf)

**Explain that the contractor must submit weekly payrolls and Statements of Compliance**

**signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors.**

**Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact HUD immediately.**

**Explain that employee interviews will be conducted periodically during the project. Emphasize that a copy of the wage rate decision must be posted at the job site.**

**Explain that apprentices or trainees must be registered in a bona fide apprenticeship or training program registered with the US Dept of Labor or certified by PA Apprenticeship & Training Council. If apprentices or trainees are to be used, the contractor must provide the HA with a copy of the State or Federal certification of his/her program. Apprentice wage rates and allowable ratios must be a part of the documentation..**

**If the contract is $100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of $10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.**

**Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.**

**Provide contractor with posters for the job site, such as the "Notice to All Employees Working on Federal or Federally Financed Construction Projects." These posters and others that are required are available in both English and Spanish at:** <http://www.dol.gov/whd/reqs/compliance/posters/fedprojapdf> **(WH-1321 Davis-Bacon Poster (English) or** <http://www.dol.gov/whd/reqs/compliance/posters/davispan.pdf>. **(WH-1321 Davis Bacon Poster (En Espanol)**

**The HA will also describe the compliance monitoring that will be conducted during the**

**project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor.**

**Remind the contractor that labor standards provisions are as legally binding as the**

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technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

**Notice to Proceed**

* Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general 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.

**Payroll Review**

* Once construction is underway, the prime/general contractor must complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.
* Certified payroll reports should be submitted by the prime/general contractor to the HA within a reasonable timeframe so as to ensure compliance, typically no more than 10 working days following the end of the payroll period.
* The HUD payroll form (WH-347) or similar payroll documentation (i.e. electronic web-based programs) must include all of the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).
* The subcontractor payrolls should be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and, potentially, liquidated damages that may be assessed for overtime violations.
* The HA will review every payroll to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no other falsifications.(Payroll **Checklist must be completed and signed)**
* In addition to the falsification indicators described in the **HUD** guidance, items to be spot-checked will include:
* The correct classification of workers;
* A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
* Information is in agreement with that recorded on HUD-11s
* A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
* Review of deductions for any non-permissible deductions; and
* The Statement of Compliance has been signed by the owner or an officer of the firm.
* Any discrepancies and/or falsification indicators will/must be reported to HUD, along with the steps being taken by the HA to resolve the discrepancies. Where underpayments of wages have occurred, the HA is responsible to make sure the correct wages are

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**paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. The HA will contact HUD for assistance if a violation occurs.**

**On-Site Interviews**

* **The labor standards requirements include periodically conducting job site interviews with workers. 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 should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a reasonable judgment as to compliance.**
* **Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).**

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

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

**To initiate the interview, the authorized person shall:**

* **Properly identify himself/herself;**
* **Clearly state the purpose of interview; and**
* **Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.**

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

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

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* If there are discrepancies, detailed statements are necessary.
* Enter any comments necessary.
* Enter date interview took place.
* The HUD-11s 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.
* If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.
* If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731). The complaint must be investigated and resolved. Contact HUD if necessary.

**Progress Payments**

* Upon receipt of requests for payment during construction, the HA will check that labor standards compliance is being met.
* All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved; and
* Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.
* The HA requires a 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems.

**Final Payment**

* When construction work has been completed, the contractor will submit a final request for payment. Before making final payment, the HA will ensure that:
* All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved;
* All discrepancies identified through job site interviews have been resolved; and
* All files are complete.

Restitution for Underpayment of Wages

* Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.
* Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.
* HA will 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

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contractor will be allowed 30 days to correct the underpayments.

* The employer is required to report the restitution paid on a correction certified payroll.

The correction payroll will reflect the period of time for which restitution is due (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 must be attached to the corrected payroll form and each employee who has received restitution should sign the corrected payroll as evidence of their receipt of the payments.
* The HA will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.
* 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 will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The HA will continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers should be forwarded to HUD.

Additional guidance available from HUD on disputes, withholding, deposits and escrow accounts is in the publication "Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects."

**Documentation & Reporting Requirements**

Documentation for Each Contract

* HA will maintain documentation to demonstrate compliance with the labor standards requirements including, but not limited to:
* Bid and contract documents with the labor standards clause and wage decision;
* Proof of Contractor Eligibility ([SAM.gov](http://SAM.gov) printout)
* Payroll forms from the contractor and subcontractors, including original signed statements of compliance;
* Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies **(see Payroll Checklist);**
* Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime);
* Labor Standards Compliance Checklist **(completed, reviewed and signed);** and

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* **Enforcement reports (see below for more information).**
* **The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected are not unduly exposed to financial or personal risk.**
* **The standard compliance documents must be preserved and retained for a period of five years following the completion of work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure, including:**
* **Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);**
* **Do not include Social Security Numbers on documents and records unless it is absolutely necessary;**
* **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. Reporting**
* **HA must report to the Department of Labor on all covered contracts awarded and on all enforcement actions taken each six months. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all of the Davis-Bacon construction activity.**
* **The Semi-Annual Report is due April and October. Form (HUD-4710) and instructions (HUD-4710i) are available on HUD's web site and HUDClips** <http://portal.hud.gov/hudportal/HUD?src=/procram> offices/administration/hudclips

**Additional Reference & Guidance Materials**

**HUD Handbook 1344.1 REV-2**

**HUD Regulations: 24 CFR**

**DOL Regulations: 29 CFR, Parts 1,3,5,6 & 7**

**Labor Relations Letters**

**Labor Relations Desk Guides:**

**-Making Davis-Bacon Work - A Practical Guide for States, Indian Tribes**

**and Local Agencies**

**-Contractor's Guide to Prevailing Wage Requirements for Federally-assisted**

**Construction Projects**

**On the Mark! Series**

**DOL Memoranda 130 & 131 - "Character of Work" Examples under DBRA**

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