CDBG GRANT ADMINISTRATION HANDBOOK

Updated May2026

Chapter 5 – Labor Standards

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Table of Contents

LABOR STANDARDS AND COMPLIANCE 4
APPLICABILITY 4
FEDERAL REQUIREMENTS 4
Exceptions 5
PRE-BIDDING REQUIREMENTS 5
BIDDING AND CONTRACT REQUIREMENTS 6
Preparing Bid Packages to Meet Federal and State Labor Standards Provisions 6
PRECONSTRUCTION CONFERENCES 8
CERTIFIED PAYROLL REQUIREMENTS 10
Certified Payroll Reports 10
Fringe Benefits 11
LABOR STANDARDS COMPLIANCE REQUIREMENTS 12
Employee Interviews 12
Wage Restitution 12
Notification to the Prime Contractor 13
Computing Wage Restitution 13
Correction Certified Payroll Reports 13
Pay and Document Restitution of Wages 13
Review of Correction Certified Payroll Report 14
Unfound Workers 14
USE OF FORCE ACCOUNT WORK 14
Force Account Labor 14
Force Account Equipment 14
ENFORCEMENT REPORTS 15
PAYMENTS TO CONTRACTORS 15
Conditions of Progress Payments 15
Protection of Progress Payments Made for Manufactured Equipment Specifically 16
Contract Provisions 16
Implementation of Policy 16
RETENTION OF PROGRESS PAYMENTS 16
Liquidated Damages 17
CONSTRUCTION PROGRESS SCHEDULES 17

Schedule Requirements 17
REVISION HISTORY 18

LABOR STANDARDS AND COMPLIANCE

APPLICABILITY

Construction projects funded with CDBG require that certain procedures be followed in order to comply fully with applicable federal and state requirements. For example, federal and state labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment of workers on construction projects.

This section describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, compliance with labor standards, and inspection and approval procedures.

Essentially, the Labor Standards requirements consist of the following elements:

- Determining Applicability
- Including Federal Wage Decisions in Bid Documents and Construction Contracts
- Verifying Contractor Compliance
- Implementing Corrective Actions (if necessary)
- Recordkeeping & Reporting

FEDERAL REQUIREMENTS

Most construction projects including alteration, repair or demolition, funded in whole or in part with federal dollars, including CDBG, must comply with federal Labor Standards Provisions. Applicable laws include the following:

- The Davis-Bacon Act (40 USC Sections 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction, alteration, or repair work of more than $2,000 that is financed in whole or in part with CDBG or other federal funds, regardless of the CDBG amount.

- The Copeland Anti-Kickback Act (40 USC Section 3145) requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.

- The Contract Work Hours and Safety Standards Act (40 USC Sections 3701-3707) requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all CDBG-assisted construction contracts of $100,000 or more. The Act also imposes a financial penalty for failure to pay such overtime wages and requires overtime for traditionally exempt salaried construction workers. (NOTE: Overtime is required for ALL workers via the Fair Labor Standards Act including projects without federal funds.)

HUD has two guides and a handbook that are available for downloading on labor standards requirements. These documents are "Davis Bacon Labor Standards: Agency/Contractor Guide" and the "Davis Bacon Labor Standards: Contractor Guide Addendum". HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements.

Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- Construction contracts at or below $2,000. Note that arbitrarily separating a project into contracts below $2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation or construction of residential properties containing less than eight (8) units with CDBG funds.
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, procurement of modular (industrialized) and manufactured housing components, and certain pieces of equipment that would not become permanently affixed to the real property.
- Contracts solely for demolition, when no construction is anticipated on the site.
- Force account labor (construction carried out by municipal employees or, in certain instances, a sub-recipient's employees).
- Volunteers. However, volunteering for part of the project and working part of the project is prohibited.

GOED should be contacted in any situation where the applicability of Davis-Bacon is in question.

PRE-BIDDING REQUIREMENTS

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification - usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Please refer to Chapter 3: Procurement for more guidance on bidding.

Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer licensed in South Dakota. Water and sewer projects also require the approval of various state agencies. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage determinations (see Chapter 3: Procurement).

NOTE: The environmental review must be completed and, if applicable, release of funds received from GOED prior to publishing the bid advertisement. Please refer to Chapter 2: Environmental Review for more information.

BIDDING AND CONTRACT REQUIREMENTS

A Grantee must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in Chapter 3: Procurement). The Grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Once a construction project becomes subject to federal labor standards provisions, the following steps must be taken to ensure compliance. The Labor Standards Officer (LSO) typically takes responsibility for these steps. Typically, the LSO is the grant administrator, an employee of the local govnerment, or the architect/engineering firm. This role must be defined before the Notice to Proceed is issued for the construction project.

Step 1: Obtain Applicable Federal Wage Rate Decision

The Grantee should access the federal wage rate decisions through the Internet at https://sam.gov/content/wage-determinations. Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. When evaluating the type of wage determination to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

Residential projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

Building construction generally includes construction of sheltered enclosures with walk-in access for the purpose of housing persons (with the exception of activities that meet the definition above), machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Construction of mixed-use buildings (such as upper story housing and commercial on the lower level) would be subject to this classification. Also, the installation of heavy machinery and/or equipment that does not generally change the project's character as a building.

Highway projects include construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Heavy construction includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

GOED staff should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary, including those instances where the Grantee is required to request “multiple” wage determinations from the Department of Labor. Multiple wage determinations may be required when the project contains separate and distinguishable components that fall into different categories of construction.

CAUTION: If the Grantee fails to include the correct wage rate determination(s), the Grantee will be responsible for paying any difference between the applicable wage rates and the wages paid by the contractor based upon the information provided in the bid package.

Step 2: Add CDBG Required Documents to the Bid Package

The applicable wage rate decision must be a part of the bid package. The bid package must also contain language explaining all labor standards requirements, which are designed to protect employee rights (in addition to other federal procurement provisions). Grantees may attach the Form 5-1: HUD Federal Contract Provisions to meet this requirement (also known as the HUD 4010 Form). Grantees may also use Form 3-14: Info For Bidders Required Documents to ensure that all necessary CDBG related documents are included in the bid package. GOED has provided Form 3-14 to assist grantees, but it is important to remember that the grantee is ultimately responsible for compliance with all state and federal requirements.

Step 3: Procurement Requirements

Once the bid document is prepared, the bid package must be submitted to GOED for review and approval prior to advertising for construction bids. Refer to Chapter 3: Procurement for specific instructions on how to proceed with the bidding process.

NOTE : Grantees should NOT be submitting the bid package to GOED until the RROF has been submitted.

Step 4: Wage Determination Lock-in and Contracting

Because the U.S. Department of Labor (DOL) continually monitors the economic conditions of the construction contracting profession, the wage rates are subject to change. It is essential that the grantee verify that the most current rates are being utilized. The Davis-Bacon Wage Determination effective date must be no more than 10 days prior to the bid opening. Therefore, the following actions must be taken:

1. Grantees must obtain the current wage decision no earlier than 10 days prior to the bid opening and provide it to the project architect or engineer to be included in the bid package and forwarded to all prospective bidders.
2. If there are any modifications, those shall be published in an addendum to the Bid Documents and sent to all prospective bidders.
3. Wage Determinations are only effective for 90 calendar days after the bid opening. On the 91st day, the previously issued determination expires. If the contract is not awarded within 90 calendar days of the bid opening, the wage decision that is in effect on the date that the construction contract is signed is the decision that will be utilized for the entire project. The Labor Standards Officer must obtain an updated wage determination and notify the contractor and engineer or architect of the new wage decision that is applicable to the project. The Labor Standards Officer must maintain record of the new lock-in decision, revising the Wage Determination Lock-In Notice if that procedure is used by the grantee.
4. The construction contract must contain the final ("locked in") wage decision, labor standards clauses required by HUD (Form 5-1: HUD Form 4010), and other federal contract provisions as described in Chapter 3: Procurement and Contracting.

PRECONSTRUCTION CONFERENCES

Before any work is performed by a contractor, GOED strongly recommends that the Grantee, the grant administrator, the engineer or architect, and any other technical advisors to the Grantee conduct a pre-construction conference with the contractor, and any identified subcontractors, to explain contractual requirements and performance schedules.

The Grantee should prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. Form 5-8: Preconstruction Conference Checklist has been provided as a sample.) A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. The grantee should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Items that should be covered at the pre-construction conference include, but are not limited to:

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
- Obtain the prime contractor's Federal Identification Number and Unique Entity Identifier (UEI) number that is registered in the System for Award Management (SAM). Explain all subcontractors must have a UEI as well.
- Explain that the contractor must submit weekly payrolls and statements of compliance on **Form 5-2: DOL WH347** or equivalent, signed by an officer of the company or person authorized by owner/officer, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors. Form 5-3: Instructions for WH347 Form has been included to assist contractors and/or grant administrators who are not familiar with the form.
- 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, contractors can request them using Form 5-4: Request for Authorization of Additional Classification and Rate (SF-1444). The Grantee must submit the form to the U.S. Department of Labor at whd_cbaconformance_incoming@dol.gov. Include the Contracting Officer's name, address, telephone, and email address. An automated confirmation response will be generated upon receipt of your submission. The DOL Branch of Construction Wage Decisions (BCWD) responds to most requests within 30 days. Form 5-5: Instructions for Request for Additional Classification has been provided by GOED to assist in completing this form.
- Explain that employee interviews will be conducted on-site during the project to ensure compliance with prevailing wage requirements.
- Emphasize that both a copy of the wage rate decision and the wage rate poster "Employee Rights under the Davis Bacon Act" must be posted in clear view of all employees at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is registered and approved by the U.S. Department of Labor.
- Foremen or supervisors that spend more than 20% of their time performing covered construction work must be paid at least the prevailing hourly rate for the time spent performing such work.
- 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, including otherwise exempt salaried construction workers. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law.

- Indicate that failure to pay workers at least time and a half whenever overtime occurs violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) and makes the contractor liable for not only restitution but also liquidated damages of $31 per day for every day each worker exceeded 40 hours a week without being paid time and a half. (The $31 penalty amount is applicable as of January 16, 2023 and adjusts annually. See CWHSS Liquidated Damages Penalty for current liquidated damages amount.)

- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kickback" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentration. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.

- Explain the possibility of federal debarment for violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.

- Provide contractor with posters for the site, including "Employee Rights under the Davis Bacon Act," as well as other worksite posters such as "Notice to All Employees Working on Federal or Federally Financed Construction Projects," "Safety and Health Protection on the Job," and "Equal Employment Opportunity is the Law." These posters are available via the DOL Workplace Posters website. The website also contains a feature called "FirstStep Poster Advisor" that will help employers determine all posters that they are required to display at their business. Posters, available in English and other languages, may be downloaded free of charge and printed directly from the DOL website. Grantees should encourage contractors to communicate information regarding employee rights in a language they understand, by translation or interpretation of required posted materials.

- If the project will receive more than $300,000 in CDBG and/or other HUD financial assistance, explain the contractors' requirements for Section 3 compliance. Detailed information on Section 3 can be found in Chapter 3: Procurement of this manual.

- Inform the contractor that it is their responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions.

- Provide handouts explaining everything covered and obtain the contractor's signature to document receipt in Form 5-8: Pre-Construction Conference Checklist.

- The Grantee should also describe the compliance review that will be conducted during the project and indicate that discrepancies and underpayments discovered as a result of compliance review must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

NOTE : If the project will consist of multiple bid packages, best practice dictates that the pre-construction conference includes contractors from all bids.

CERTIFIED PAYROLL REQUIREMENTS

Once construction is underway, the general contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must 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 found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations

Certified Payroll Reports

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance that include completed statements of how fringe benefits will be paid), and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. See Payroll Falsification Indicators from the HUD Guidebook, Making Davis Bacon Work, for guidance on detecting falsification through frequent payroll review and interview comparison. If contractor/subcontractors use an approved apprentice or training program, verify that the ratio between trade journeymen and apprentices complies with the approved apprenticeship program.

Certified Payroll Reports should be submitted by the contractor to the Grantee within fourteen working days of the end of the payroll period. A Payroll Form and Statement of Compliance (WH-347) (Form 5-2) provided by the DOL has been provided by GOED. . This form is also commonly called a Certified Payroll Report (CPR). Electronic submission and electronic signatures are allowed ONLY when they are submitted using a legitimate digital signature format such as DocuSign or Adobe Electronic Signature. A scanned copy sent via PDF is not an acceptable certified payroll report.

CAUTION: It is important for grantees to note that they must NOT accept the expired version of the WH-347 form from contractors after September 30, 2026

An employee's full social security number and address should not be included on these CPR's. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. A Statement of Compliance (Form 5-2, page 2) must accompany each payroll submission.

Payroll reports must be reviewed by the Grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should 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,
- 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 (Form 5-2, page 2) has been completed and signed by the owner or an officer of the firm.

As a reminder, HUD Handbook 1344.1 is a good resource for labor standards information.

Fringe Benefits

The wage decision lists a minimum basic hourly rate of pay for each work classification. Some wage decisions also include fringe benefits, which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless the contractor is providing bona fide fringe benefits for employees. Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave. The cash equivalent of the fringe benefits provided may be added to the amount of the base wage with the total amount due reflected in the hourly rate column on the Certified Payroll Report (CPR).

Paragraph (a) or (b) on the Statement of Compliance (Form 5-2, page 2) must be marked on every CPR to indicate the method by which fringe benefits will be paid. If the fringe benefits are being paid to a bona fide fringe benefit plan, the Grantee must obtain verification from the contractors or subcontractors of the calculation of benefits paid and proof of plan validity. Bona fide fringe benefit plans are identified at 29 CFR4.171.

Examples include but are not limited to:

1. **Health, life or other similar insurance premiums paid by the employer.** Documentation includes:
    a. Most recent insurance statement with a breakdown of each covered employee's premium, and
    b. A signed letter by an officer of the company that states how much of the premium they cover (percentage or dollar amount).
2. **Pension or retirement contributions recognized by the Internal Revenue Service (IRS) and contributed by the employer.** Documentation includes:
    a. Letter from Pension Provider stating which employees participate in the program,
    b. Signed letter by an officer of the company that states what percentage of contributions they match, or if it is automatically given to the employee even if they do not contribute, and
    c. Monthly statements throughout the project that show how much the employee contributed and how much the employer contributed.
3. **Holiday and/or vacation pay contributed by the employer.** Documentation includes:
    a. Copy of Employee Handbook that states the number of paid vacation and holidays provided to employees and
    b. Copy of employer's calculations for the amount of fringe benefit credit claimed for vacation and holiday pay listed by employee.
4. **Union Fringe Benefit Packages.** Documentation includes:
    a. Copy of the Union Benefits Breakdown provided by each specific Union to the contractor, and
    b. Monthly statement listing covered employees and verifying payment to the plan.

Fringe benefits do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or Workmen's Compensation. The Grantee must verify that the base rate plus fringe benefit amount paid to each employee is equal to or greater than the amount stated in the wage determination assigned to the project.

LABOR STANDARDS COMPLIANCE REQUIREMENTS

During construction, the Grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this chapter. This role for the Labor Standards Officer may be fulfilled by the architect/engineer or Grantee, and if so, should be included in the scope of services for that professional services contract.

Employee Interviews

Construction management requirements include conducting job site interviews with workers using Form 5-6: Record of Employee Interview (HUD Form 11). HUD's website provides links to many of HUD's Davis-Bacon Forms.

The Grantee should use on-site interviews as a proactive enforcement tool rather than as a means to meet a "representative sampling" quota. Instead of conducting interviews randomly for the sake of assembling a sample, the Labor Standards Officer is encouraged to target interviews to groups of workers where violations are suspected or alleged, being especially attentive to Payroll Falsification Indicators.

The targeting approach is a more efficient and effective means of utilizing on-site interview resources. The Labor Standards Officer must also ensure that a sufficient sampling of all trades included in the project are interviewed.

The Grantee should ensure the following actions are performed:

- Interviews are conducted periodically, following the protocols below, during each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage determination, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.

A Grantee will need to seek language assistance to interview non-English speaking workers or may seek to gather information using Form 5-7: Labor Standards Questionnaire (HUD Form 4730), either in person or requesting it back by mail. The results from the questionnaire must be transferred to Form 5-6: Record of Employee Interview (HUD Form 11). A fully completed and signed Form 5-6: Record of Employee Interview Form is maintained in the contract file.

Wage Restitution

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

wage restitution, must be reported on a Certified Payroll Report (CPR). Whenever an employer is found to have underpaid its employees by $1,000 or more or committed willful falsification, grantees should contact GOED staff for assistance.

Notification to the Prime Contractor

The Labor Standards Officer will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the Grantee may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the Labor Standards Officer for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing Wage Restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage determination 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.

Correction Certified Payroll Reports

The employer will be required to report the restitution paid on a Correction Certified Payroll Report. A "Correction Certified Payroll Report" is completed using Form 5-2: Payroll Form and Statement of Compliance (WH-347). A correction payroll differs slightly from regular certified payroll report. For example, the Correction CPR should indicate the time period for adjustment (7/2/23 thru 8/26/23, or CPRs #1 thru #8). The Correction CPR will 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 properly signed Statement of Compliance (**Form 5-2**, page 2) must be attached to the Correction CPR.

Pay and Document Restitution of Wages

The employer must pay and document payment of restitution wages. **Note:** During basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks, copies of cancelled checks, receipts signed by the employees, employee signatures on the correction CPR, etc., is not required.

Review of Correction Certified Payroll Report

The Labor Standards Officer (LSO) will review the Correction CPR 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 CPR within 30 days.

Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise cannot be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. After reasonable efforts to locate the workers are exhausted, the Grantee must turn over the gross amount due to any unfound workers to HUD. Grantees should contact GOED for repayment instructions.

USE OF FORCE ACCOUNT WORK

Force Account Labor

Force Account Labor refers to the use of municipal employees, and in certain instances, a sub-recipients employees, on a CDBG construction project. In such cases, the local government does not have to pay the Davis-Bacon wage rates but, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the CDBG program.

It may be advantageous at times for a Grantee to use force account labor to save money, expedite construction, and/or eliminate the time and expense associated with advertising, bidding, and award of a construction contract. If so, the Grantee must justify why using force-account labor would serve the public interest. The use of force account labor must be approved by the CDBG program manager prior the submission of grant application. The written request must include:

- A description of the nature of the work;
- A detailed description of how the work is to be done;
- A cost breakdown for materials, equipment, labor and overhead; and
- An explanation of why doing the work by force account would be more cost-effective than competitive bidding.

Force Account Equipment

The cost of using municipally owned or rented equipment, including the cost of maintenance and operations, is allowed. Equipment may NOT be purchased with CDBG funds. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost as described in this chapter. Rented or leased equipment must be supported by a copy of the rental or lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA Schedule of Equipment Rates for the equipment. Such allocations of cost must be approved by the GOED, in advance.

The Grantee must maintain thorough documentation of all costs. All costs charged to the project must apply to a particular line item of the CDBG contract budget. This documentation must include, at a minimum, the following:

- Employee personnel policies that delineate paid leave, overtime, travel, etc.;
- Time sheets identifying construction or administrative personnel and work performed;
- All timesheets should correspond to the Grantee's regular employee time sheets;
- An equipment cost calculation form signed and approved by authorized personnel that determines the hourly cost for each piece of equipment;
- Documentation of the use of the equipment and operator.; and
- Invoices and canceled checks for all construction materials and other supplies.

ENFORCEMENT REPORTS

The U.S. Department of Labor regulations require all agencies administering labor standards to submit two reports. GOED coordinates the submission of those reports for CDBG grantees.

- **Section 5.7 Enforcement Report**: DOL requires a report regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of $1,000 or where there is reason to believe that the violations were willful. Grantees, generally the LSO, must prepare and submit such reports called Section 5.7 Enforcement Reports to GOED to then be forwarded to HUD. The Section 5.7 Enforcement Report should be submitted after completing an investigation and after final disposition is reached at the local level. HUD has provided guidance on completing the report in Letter Number LR 23-01 . A Sample has been included as Form 5-9: Sample Section 5.7 Enforcement Report.

  - Semi-Annual Labor Standards Enforcement Report: All enforcement activities, including any activities described in a Section 5.7 Enforcement Report AND enforcement activities that did not reach the threshold requiring a Section 5.7 Enforcement Report are listed and summarized in the semi-annual report. This report also lists all contracts that were issued during the six-month reporting period that are subject to Davis-Bacon wage decisions. Form 5-10: Semi-Annual Labor Standards Enforcement Report (HUD 4710) is sent to GOED by March 15th and September 15th each year that a CDBG grant agreement is open. Form 5-11: Instructions Semi-Annual Labor Standards Enforcement Report (HUD 4710i) provides helpful information for completing the form.

PAYMENTS TO CONTRACTORS

It is State policy that prompt progress payments shall be made by Grantees to prime contractors and by prime contractors to subcontractors and suppliers for eligible construction, material and equipment costs, including those of undelivered specifically manufactured equipment, incurred under a contract.

Conditions of Progress Payments

For purposes of this section, progress payments are defined as follows:

1. Payments for work in place.

2. Payments for materials or equipment which have been delivered to the construction site, or which are stockpiled in the vicinity of the construction site, in accordance with the terms of the contract, when conditional or final acceptance is made by or for the Grantee. It is the Grantee's responsibility to ensure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.
3. Payments for undelivered specifically manufactured items or equipment (excluding off-the-shelf or catalog items), as work thereon progresses. Such payments must be made if provisions therefore are included in the bid and contract documents. Such provisions may be included at the option of the Grantee only when all of the following conditions exist:
    a. The equipment is designated in the project specifications;
    b. The equipment to be specifically manufactured for the project could not be readily utilized on nor diverted to another job; and
    c. A fabrication period of more than six months is anticipated.

Protection of Progress Payments Made for Manufactured Equipment Specifically

The Grantee will assure protection of the State's interest in progress payments made for items or equipment referred to in this section. This protection must be acceptable to the Grantee and must take the form of securities negotiable without recourse, condition or restrictions; progress payment bond; or an irrevocable letter of credit provided to the Grantee through the prime contractor by the subcontractor or supplier.

Contract Provisions

Where applicable, appropriate provisions regarding progress payments must be included in each contract and subcontract. Grantees must use clauses acceptable to the State. See Chapter 3: Procurement for more information.

Implementation of Policy

The foregoing progress payments policy should be implemented in invitations for bids. If provision for progress payments is made subsequent to contract award, it must be for consideration which the Grantee deems adequate.

RETENTION OF PROGRESS PAYMENTS

The Grantee may retain a portion of the amount otherwise due the contractor. Except as state law otherwise provides, the amount retained by the Grantee shall be limited to the following:

1. Withholding of 10 percent of the payment claimed until the work is 50 percent complete;
2. When work is 50 percent complete, the 10 percent retainage that has been withheld will continue to be held, however, the subsequent withholding can be reduced to 5 percent of the dollar value of work remaining;
3. When the work is substantially complete (operation or beneficial occupancy), the withholding percentage for subsequent payments can be further reduced to below 5 percent and the contractor can be paid the full previous retainage minus the value of any work remaining at the time of substantial completion. The contractor may be paid all retainage amounts when the Grantee makes final payment on the project;

4. The Grantee may reinstate up to 10 percent withholding if the Grantee determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for such withholding; and

5. The Grantee may accept securities negotiable without recourse, condition or restrictions, a release of retainage bond, or an irrevocable letter of credit provided by the contractor in lieu of all or part of the cash retainage.

Appropriate provisions to ensure compliance with this policy must be included in the bid documents for such projects initially or by addendum prior to the bid submission date and as a special condition in the grant agreement or in a grant amendment. For all previous active projects, the policy may be implemented by the Grantee through contract amendment upon written request to the Grantee by the contractor upon consideration which the Grantee deems adequate.

Liquidated Damages

For each consecutive calendar day that any part of the work remains uncompleted after the expiration of the time allowed for completion of the work stipulated in the contract, the contractor will pay to the Grantee any expenses incurred by it on account of said contractor requiring such additional time, which expense shall include additional cost for Engineering, inspection and legal work caused by such delay. Such costs are not to be considered as penalties. A predetermined amount may be agreed upon prior to the signing of the contract.

The assessment of liquidated damages for failure to complete the work within the contract period shall not constitute a waiver of the contracting authority's right to collect any additional damages which the contracting authority may sustain by failure of the contractor to carry out the terms of the contract.

The damages stipulated above are to be deducted from any monies due the contractor as liquidated damages for the loss to the Grantee on account of the expense due to the employment of Engineers and their assistants and to any other expenses after the expiration of the completion time set forth by the Engineer.

CONSTRUCTION PROGRESS SCHEDULES

Schedule Requirements

Prior to the first partial payment estimate, the contractor shall submit to the Grantee, construction progress schedules showing the order in which it is proposed to carry on the work, including dates at which various parts of the work will start, estimated date of completion of each part, and, as applicable:

1. The dates at which special detail drawings will be required.

2. Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies, and equipment.

3. The contractor shall also submit a schedule of payments that it is anticipated will be earned during the course of the work. The payment schedule may be in conjunction with the progress chart or separately, if desired.

4. These schedules shall be updated on a monthly basis. The schedule shall be revised whenever actual progress varies by 10% or more and also when a time extension is granted.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	4/27/24	• Initial Release	S Deyo
2.0	5/22/26	• Updated WH-347 language regarding expiring form • Replaced Form 5-3: Instructions for WH-347 Form • Added reference to Form 3-14: Info for Bidders Required Documents • Updated hyperlinks	S Deyo