



355 FOURTH STREET  
BENNETT, COLORADO  
80102-7806  
(303) 644-3249  
(303) 644-4125 - FAX

**REQUEST FOR PROPOSALS  
COVER SHEET**

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**Date:** May 22, 2012  
**Proposal Number:** 12-006  
**Proposal / Bid Title:** **Community Center Inside Enhancement Project**  
**Proposals Will Be Received Until:** June 11, 2012, 4:00 p.m., local time  
Town Hall, 355 Fourth Street, Bennett, CO  
**Pre-submittal Walk Through:** May 31, 2012, 1:00 p.m., local time  
**Goods or Services to Be Delivered to or Performed At:** Town of Bennett, Community Center  
1100 West Colfax Avenue  
Bennett, CO 80102  
**For Additional Information Please Contact:** Trish Stiles, Treasurer  
(303) 644-4506  
**Email Address:** tstiles@bennett.co.us  
**Documents Included in This Package:** Request for Proposals Cover Sheet  
General Terms and Conditions  
Special Terms and Conditions  
Specification Form  
Pricing Form  
Submission Form  
Agreement for Services  
Substitute Form W-9

If any of the documents listed above are missing from this package, they may be picked up at Town Hall, 355 Fourth Street, Bennett, CO. If you require additional information, call Lu Herrera at 303/644-3249 ext 0.

The undersigned hereby affirms that (1) he/she is a duly authorized agent of the contractor, (2) he/she has read all terms and conditions and technical specifications which were made available in conjunction with this solicitation and fully understands and accepts them unless specific variations have been expressly listed in his/her offer, (3) the offer is being submitted on behalf of the contractor in accordance with any terms and conditions set forth in this document, and (4) the contractor will accept any awards made to it as a result of the offer submitted herein for a minimum of ninety calendar days following the date of submission.

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**PRINT OR TYPE YOUR INFORMATION**

Name of Company: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Authorized Representative's Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

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Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

**REQUEST FOR PROPOSALS  
GENERAL TERMS AND CONDITIONS**

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**I. APPLICABILITY**

The Town of Bennett ("Town") desires to solicit proposals from interested firms or persons desiring to offer general contractor services for upgrades to the Town's Community Center. This document sets forth general information and requirements for persons and firms ("Contractors") interested in submitting "Proposals" in response to this Request for Proposals ("Solicitation").

**II. CONTENTS OF PROPOSAL**

A. GENERAL CONDITIONS. Contractors are required to submit their Proposals in accordance with the following express conditions:

1. Contractors shall make all investigations necessary to thoroughly inform themselves regarding the conditions of Town of Bennett Community Center Facility. No plea of ignorance by the Contractor of conditions that exist or that may hereafter exist as a result of failure to fulfill the requirements of the contract documents will be accepted as the basis for varying the requirements of the Town or the compensation to the Contractor.
2. Contractors are advised that all Town contracts are subject to all legal requirements contained in the Town's Purchasing Policies, State and Federal statutes. When conflicts between the Solicitation and these legal documents occur, the highest authority will prevail. This project is funded through the Community Development Block Grant (CDBG), which is facilitated through the Federal Department of Housing and Urban Development (HUD). CDBG regulations and associated Office of Management and Budget (OMB) Circulars precede over all other regulations, statutes, and laws, where conflict exists.
3. This project shall be accomplished in accordance with all federal program and state statutory requirements to include Executive Orders, Administrative Rules and Regulations. The successful proposer will be required to lend all possible assistance in the preparation, investigation and documentation necessary for compliance with all applicable Davis Bacon, Federal Labor Standards, and other requirements of the HOUSING/CDBG Program. The successful proposer should be prepared to comply with all local, state and federal safety and environmental requirements.
4. All Proposals and other materials submitted in response to this Solicitation shall become the property of the Town upon receipt and will not be returned to the Contractor. Selection or rejection will not affect this right. Information that is considered proprietary should be clearly marked as such and will be handled in accordance with applicable federal and state laws. Neither cost information nor any response in total will be considered proprietary, and Contractors should assume that all portions of their response other than proprietary information will be public records.

5The provisions herein are solely for the fiscal responsibility of the Town and confer no rights, duties or entitlements to Contractors.

6. This Solicitation is not an offer to contract.

## **B. CLARIFICATION AND MODIFICATIONS IN TERMS AND CONDITIONS**

1. Where there appear to be variances or conflicts between the General Terms and Conditions, the Special Terms and Conditions and the technical specifications outlined in this Solicitation, the technical specifications then the Special Terms and Conditions will prevail.
2. If any Contractor contemplating submitting a Proposal under this Solicitation is in doubt as to the true meaning of the specifications, the Contractor must submit a **written request** for clarification to the Town at 355 Fourth Street, Bennett, CO 80102. The Contractor submitting the request shall be responsible for ensuring that the request is received by the Town at least five calendar days prior to the scheduled deadline for submission of Proposals.

**Any official interpretation of this Solicitation must be made by an agent of the Town who is authorized to act on behalf of the Town. The Town shall not be responsible for interpretations offered by employees of the Town who are not agents of the Town.**

The Town shall issue a written addendum if substantial changes which impact the technical submission of Proposals are required. A copy of such addenda will be mailed or distributed via facsimile transmission to each Contractor receiving the Solicitation. The Contractor shall certify its acknowledgment of the addendum by signing the addendum and returning it with its Proposal. In the event of conflict with the original contract documents, addenda shall govern all other contract documents to the extent specified. Subsequent addenda shall govern over prior addenda only to the extent specified.

## **C. PRICES CONTAINED IN PROPOSAL- DISCOUNTS, TAXES, COLLUSION**

1. Contractors may offer a cash discount for prompt payment. Discounts will be considered in determining the lowest net cost for the evaluation of Proposals; discounts for periods of less than twenty days, however, will not be considered in making the award. Contractors are encouraged to provide their prompt payment terms in the space provided on the Solicitation's Specification and Pricing Form. If no prompt payment discount is being offered, the Contractor shall enter a zero (0) for the percentage discount to indicate net thirty days. If the Contractor does not enter a percentage discount, it is hereby understood and agreed that the payment terms shall be net thirty days, effective on the date that the Town receives an accurate invoice or accepts the products, whichever is the later date. Payment is deemed to be made on the date of the mailing of the check. Cash discounts for prompt payment shall not be used as the sole criteria for determining lowest net project cost.
2. Contractors shall not include federal, state, or local excise or sales taxes in prices offered, as the Town is exempt from payment of such taxes. Town tax identification numbers will be made available to the selected contractor.
3. The Contractor, by affixing its signature to this Solicitation, certifies that its Proposal is made without previous understanding, agreement, or connection either with any persons, firms or corporations making a Proposal for the same items, or with the Town. The Contractor also certifies that its Proposal is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. To insure integrity of the Town's public procurement process, all Contractors are hereby placed on notice that any and all Contractors who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.

## **III. PREPARATION AND SUBMISSION OF PROPOSAL**

### **A. PREPARATION**

1. The Proposal must be typed. All corrections made by the Contractor must be initialed **in blue ink** by the authorized agent of the Contractor.
2. Proposals must contain, **in blue ink**, a manual signature of an authorized agent of the Contractor in the space provided on the Solicitation cover page. **The original cover page of this Solicitation must be included in all Proposals. If the Contractor's authorized agent fails to sign and return the original cover page of the Solicitation, its Proposal may be invalid and may not be considered.**
3. Unit prices shall be provided by the Contractor on the Solicitation's Specification and Pricing Form when required in conjunction with the prescribed method of award and **shall be for the unit of measure requested**. Prices that are not in accordance with the measurements and descriptions requested shall be considered non-responsive and shall not be considered. Where there is a discrepancy between the unit price and the extension of prices, the unit price shall prevail.
4. The accuracy of the Proposal is the sole responsibility of the Contractor. No changes in the Proposal shall be allowed after the date and time that the Offers are due. Changes made to the Proposal prior to the date and time that the Offers are due shall be made in accordance with Provision IV(A) of this document.

## **B. SUBMISSION**

1. The Proposal shall be sealed in an envelope with the Contractor's name and the solicitation number on the outside. The Town's Specification and Pricing form, which is attached to this Solicitation, must be used when the Contractor is submitting its Proposal. The Contractor shall not alter this form (e.g. add or modify categories for posting prices offered) unless expressly permitted in the addendum duly issued by the Town. No other form shall be accepted.)
2. Proposals submitted via facsimile machines will not be accepted.
3. Contractors, which qualify their Proposals by requiring alternate contractual terms and conditions as a stipulation for contract award must include such alternate terms and conditions in their Proposals. The Town reserves the right to declare Contractors' Proposals as non-responsive if any of these alternate terms and conditions are in conflict with the Town's terms and conditions, or if they are not in the best interests of the Town.
4. An ORIGINAL and THREE (3) copies of each Proposal must be received before the due date and time as specified in this Proposal. Failure to submit the required number of copies may deem the Contractor non-responsive. The Contractor is responsible for addressing the envelope as indicated below. Address the envelope as follows:

Town of Bennett  
ATTN: Finance  
355 Fourth Street  
Bennett, CO 80102

ATTN: Trish Stiles  
Treasurer  
RFP 12-006

- C. LATE PROPOSALS. Proposals received after June 11, 2012 at 4:00 p.m. shall be considered non-responsive and will be returned unopened to the Contractor.

## **IV. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

- A. MODIFICATIONS TO PROPOSALS. Proposals may only be modified in the form of a written notice on company letterhead and must be received prior to June 11, 2012, 4:00 p.m. Each permissible modification submitted to the Town must have the Contractor's name and return address and the applicable Solicitation number and title clearly marked on the face of the

envelope. If more than one modification is submitted, the modification bearing the latest date of receipt by the Town will be considered the valid modification.

#### B. WITHDRAWAL OF PROPOSALS

1. Proposals may be withdrawn prior to June 11, 2012, 4:00 p.m. Such requests must be made in writing on company letterhead.
2. Proposals may not be withdrawn after June 11, 2012, 4:00 p.m. for a period of ninety calendar days. If a Proposal is withdrawn by the Contractor during this ninety-day period, the Town may, at its option, suspend the Contractor from the Bidder list and may not accept any Proposal from the Contractor for a six-month period following the withdrawal.

### V. REJECTION OF PROPOSALS

#### A. REJECTION OF PROPOSALS. The Town may, at its sole and absolute discretion:

1. Accept or Reject any and all, or parts of any or all, Proposals submitted by prospective Contractors;
2. Re-advertise this Solicitation;
3. Postpone or cancel the process;
4. Waive any irregularities in the Proposals received in conjunction with this Solicitation; and/or
5. Determine the criteria and process whereby Proposals are evaluated and awarded. No damages shall be recoverable by any challenger as a result of these determinations or decisions by the Town.

#### B. REJECTION OF A PARTICULAR PROPOSAL. Examples of the reasons for which the Town may reject a Proposal, include, but are not limited to the following:

1. The Contractor misstates or conceals any material fact in its Proposal;
2. The Contractor's Proposal does not strictly conform to the law or the requirements of the Solicitation;
3. The Proposal expressly requires or implies a conditional award that conflicts with the method of award stipulated in the Solicitation's Special Terms and Conditions;
4. The Proposal does not include documents, including, but not limited to, certificates, licenses, and/or samples, which are required for submission with the Proposal in conjunction with the Solicitation's Special Terms and Conditions and/or technical specifications; or
5. The Proposal has not been executed by the Contractor through an authorized signature on the Specification's Cover Sheet.

#### C. ELIMINATION FROM CONSIDERATION

1. A Proposal may not be accepted from, nor any contract be awarded to, any person or firm which is in arrears to the Town upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the Town.
2. A Proposal may not be accepted from, nor any contract awarded to, any person or firm which has failed to perform faithfully any previous contract with the Town, state or federal government, for a minimum period of three years after this previous contract was terminated for cause.
3. Proposals will also be rejected from any bidder (individual(s) or company) debarred from Federal contracts or Adams County.

**VI. AWARD OF SOLICITATION.** The Town shall award the Solicitation to the successful Contractor through the issuance of a Notice of Award. The General Terms and Conditions, the Special Terms and Conditions, any technical specifications, the Proposal, and the Purchase Order or Notice of Award are collectively an integral part of any agreement between the Town and the successful Contractor. Accordingly, these documents shall be incorporated into a separate contract for services. No services shall be provided until the contract for services has been signed by the Town and no products shall be provided until the Purchase Order has been signed by the Contractor.

The Town of Bennett reserves the right to accept the lowest, responsible bid; to consider alternatives; to reject any or all bids; and to waive irregularities of information in any bid. Bids received after the specified time of closing will be returned unopened. The Town of Bennett also reserves the right to hold any or all bids for a period of thirty (30) days after the date of opening. Bidders will not be allowed to withdraw submitted bids during the thirty (30) day period.

**VII. INSURANCE REQUIREMENTS UPON AWARD OF CONTRACT**

A. Contracts executed pursuant to this Proposal will require Contractor to procure and maintain, at its own expense, for all work covered by this Proposal, the following policies of insurance:

a. Worker's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement:

Worker's Compensation	
Each accident	Statutory
Each employee for disease	Statutory

Contractor shall comply with the requirements of the Worker's Compensation Act of Colorado and shall provide Worker's Compensation Insurance to protect the Contractor from and against any and all Worker's Compensation claims arising from performance of work under the Agreement. The requirements of this provision shall apply to the Contractor and to all subcontractors.

b. Commercial General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage must be on an "occurrence" basis as opposed to a "claims made" basis. This insurance must pay on behalf of the Contractor all sums which the Contractor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence.

c. Commercial Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence with respect to each of Contractor's owned, hired and non owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. Commercial Automobile Liability insurance must cover the Contractor for all sums which the Contractor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence. This insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on and off the work site, and must include non ownership and hired cars coverage.

d. If indicated in Section 5 of Exhibit A, Errors and Omissions or Professional Liability Insurance with a minimum coverage as specified in Section 5 of Exhibit A, and for two years beyond the completion of all services under this agreement.

- B. The above mentioned coverages shall be procured and maintained with insurers with an A or better rating, as determined by Best's Key Rating Guide. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.
- C. The policies required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.
- D. The Commercial General Liability and Commercial Automobile Liability policies shall be endorsed to name the Town, and its elected officials, officers, employees and agents, as well as Adams County, as "ADDITIONAL INSUREDS". When Worker's Compensation and Professional Liability are required a certificate should be provided as evidence of such coverage. The policies shall provide that the Town will receive notice no less than 30 days prior to cancellation, termination or a material change to the policies.
- E. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- F. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which Town may immediately terminate this Agreement, or at its discretion, Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Town shall be repaid by Contractor to Town upon demand, or Town may offset the cost of the premiums against any monies due to Contractor from Town.
- G. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

#### H. INSURANCE CERTIFICATES

1. The Contractor shall, prior to commencing services, deliver to the Town Certificates of Insurance as evidence that policies providing any and all required coverages and limits are in full force and effect.
2. These certificates will serve as an indication to the Town that the Contractor has acquired all necessary insurance; however, the Town may require that certified copies of the insurance policies be submitted and may withhold payment for services until the applicable insurance policies are received and found to be in accordance with the Agreement.
3. Insurance limits must be on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by Town prior to commencement of services under the Agreement. The certificates shall identify this Agreement and shall state the project number where applicable.
4. Worker's Compensation Insurance. The contractor shall furnish the Town with a certificate giving evidence that it is covered by the Worker's Compensation Insurance herein required, each certificate specifically stating that such insurance includes occupational disease provisions and provisions preventing cancellation without thirty (30) days' prior notice to the Town in writing.
5. Adams County Community Development must also be named as Additional Insured in the Certificate and added to the binder.

**VII. ADDITIONAL CONTRACTUAL OBLIGATIONS.** Contracts executed pursuant to this Proposal will include, but not be limited to the following provisions:

A. LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS. Successful Contractors shall be familiar and comply with all local, state, and federal directives, ordinances, rules, orders, and laws applicable to, and affected by, this contract including, but not limited to, Equal Employment Opportunity (EEO) regulations, Occupational Safety and Health Act (OSHA), and Title II of the Americans with Disabilities Act (ADA).

B. **THIS PROJECT IS IN WHOLE OR IN PART FEDERALLY FUNDED AND THE SUCCESSFUL BIDDER WILL BE REQUIRED TO ADHERE TO SECTION 3 PROVISIONS.**

*Adams County Community Development* will monitor compliance with such provisions and standards on behalf of the *Town of Bennett*. The successful bidder will be required to complete the following forms in order to comply. A brief explanation of the form and when the form is to be submitted to *PCI* is listed below. Should you have any questions concerning Section 3 or the forms to be submitted, please contact *Adams County Community Development*, Ms. Jacqueline Pickett at 720.523.6204 or e-mail [jpickett@adcogov.org](mailto:jpickett@adcogov.org)

i. **S3B-1 SECTION 3 ASSURANCE** (1 page). This form is to be completed by the contractor and **submitted as a part of the bid package or within 3 days of contract award**. Completion of this form provides assurance that the contractor will comply with Section 3 requirements.

ii. **S3B-2 ESTIMATED PROJECT WORK FORCE BREAKDOWN** (1 page). This form is to be completed by the contractor and **submitted as a part of the bid package or within 3 days of contract award**. This form identifies additional positions needed to complete the Section 3 covered project.

iii. **S3B-3 SECTION 3 BUSINESS SELF-CERTIFICATION** (1 page). This form is to be completed by the contractor if applicable, and **submitted as a part of the bid package or within 3 days of contract award**. The bidder completes this form to qualify as a Section 3 business concern.

B. DISPOSITION. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company or corporation, without prior written consent of the Town.

C. EMPLOYEES. All employees of the Contractor shall be considered to be, at all times, employees of the Contractor, under its sole direction, and not an employee or agent of the Town. The Town may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable, and whose continued employment on Town property is not in the best interest of the Town. In accordance with the Town's policy regarding the use of tobacco products, no employee of the Contractor shall be permitted to use tobacco products when performing work on Town property.

D. DELIVERY. Prices, quotes and deliveries are to be **FOB destination, freight prepaid**, and shall require inside delivery unless otherwise specified in the Solicitation's Special Terms and Conditions. Title and risk of loss shall pass to the Town upon inspection and acceptance by the Town at its designated point of delivery, unless otherwise specified in the Special Terms and Conditions. In the event that the Contractor defaults on its contract or the contract is terminated for cause due to performance, the Town reserves the right to re-procure the materials or services from the next lowest Contractor or from other sources during the remaining term of the terminated/defaulted contract. Under this arrangement, the Town shall charge the Contractor any difference between the Contractor's price and the price to be paid to the next lowest Contractor, as well as any costs associated with the re-solicitation effort

E. MATERIAL PRICED INCORRECTLY. As part of any award resulting from this process, Contractor(s) will discount all transactions as agreed. In the event the Town discovers, through its contract monitoring process or formal audit process, that material was priced incorrectly, Contractor(s) agree to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.

F. INDEMNIFICATION. Contracts executed pursuant to this Proposal will require the selected contractor to indemnify and hold harmless the Town, and its officers and its employees, from and

against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the contractor's performance of the contract, if such injury, loss, or damage, or any portion thereof, is caused by, or claims to be caused by, the negligent act, omission, or other fault of the consultant or any subcontractor of the consultant, or any officer, employee, or agent of the consultant or any subcontractor, or any person for whom the consultant is responsible. The contract shall include provisions for the consultant to defend against such claims.

G. **TERMINATION FOR CONVENIENCE.** The Contract shall provide that the Town may cancel the contract upon thirty days written notice for reason other than cause. This may include the Town's inability to continue with the contract due to the elimination or reduction of funding.

H. **BONDS.** For any contract exceeding \$50,000, the Contractor shall furnish a performance bond, payment bond, and warranty bond in an amount determined by the Town, but in any event at least equal to the contract price, as security for the faithful performance and payment of all Contractor's obligations. The bonds will be required to remain in effect at least until one year after the date of final payment. All bonds shall be in forms acceptable to the Town and executed by such sureties licensed to conduct business in Colorado that are acceptable to the Town.

I. **CONFLICT OF INTEREST.**

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply. (2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.



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**REQUEST FOR PROPOSALS  
SPECIAL TERMS AND CONDITIONS**

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**SCHEDULE OF ACTIVITIES:** The following activities and dates are just a tentative outline of the process to be used to solicit Contractor responses and to evaluate each Proposal.

May 22, 2012 ..... Issue Request for Proposal  
May 31, 2012 ..... Pre-submittal Conference and Walk-Through  
June 5, 2012 ..... Deadline for Submitting Questions  
June 11, 2012 ..... Proposal Submittal Deadline  
June 26, 2012 ..... Award Contract

**PURPOSE:** To solicit quotes from qualified firms or persons desiring to offer general contractor services for upgrades at the Town of Bennett Community Center, 11 West Colfax Avenue, Bennett, CO 80102.

**COMPETENCY OF CONTRACTORS - MINIMUM YEARS OF EXPERIENCE AND OPERATIONAL FACILITIES REQUIRED:** Pre-award inspection of the Contractor's facility may be made prior to award of contract. Responses will only be considered from Contractors which have been engaged in the business of performing services as described in this Solicitation for a minimum period of five (5) years prior to the date of this Solicitation. Responsive Contractors with less than five (5) years' experience in the requested field may provide additional references related to the work to be performed. Section 3 residents and business concerns are encouraged to apply. Contractors must be able to produce evidence of an established satisfactory record of performance for a reasonable period of time and have sufficient financial support, equipment and organization to ensure that they can satisfactorily execute the services if awarded a contract. The term 'equipment and organization' as used herein shall be construed to mean a fully-equipped and well-established company, aligned with the best business practices in the industry and as determined by the proper authorities of the Town. The Town reserves the right, before awarding the contract, to require a Contractor to submit such evidence of its qualifications as deemed necessary, and may consider any evidence available to it (including, but not limited to, the financial, technical and other qualifications and abilities of the Contractor, including past performance and experience with the Town) in making the award in the best interests of the Town.

**QUALIFICATIONS OF CONTRACTOR:** The Town may make such investigations as deemed necessary to determine the ability of the Contractor to perform work, and the Contractor shall furnish all information and data for this purpose as the Town requests. Such information includes but not limited to: current/maximum bonding capabilities, current licensing information, audited financial statements, history of the firm on assessments of liquidated damages, contracts cancelled prior to completion and/or lawsuits and/or pending lawsuits against the firm and/or its principals. The Town reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Contractor fails to satisfy the Town that such Contractor is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

**NON-APPROPRIATION:** Pursuant to C.R.S. § 29-1-110, as amended, financial obligations of the Town after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted and otherwise available. Any contract entered with respect to this project will provide that it is automatically terminated on January 1<sup>st</sup> of the first fiscal year for which funds are not appropriated. The Town shall give the Contractor written notice of such non-appropriation.

**MATERIAL PRICED INCORRECTLY:** As part of any award resulting from this process, Contractor(s) will discount all transactions as agreed. In the event the Town discovers, through its contract monitoring process or formal audit process, that material was priced incorrectly, Contractor(s) agree to promptly

refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.

**METHOD OF AWARD - SINGLE PRODUCT:** Award of this contract will be made to the lowest responsive, responsible Contractor whose Proposal will be most advantageous to the Town, subject to the Town's right to reject all Proposals. In addition to the bid amount, additional factors will be considered as an integral part of the bid evaluation process, including the following:

- The Contractor's ability, capacity and skill to perform within the specified time limits;
- The Contractor's experience, reputation, efficiency, judgment, and integrity;
- The quality, availability, and adaptability of the supplies or materials proposed;
- Contractor's past performance;
- Sufficiency of Contractor's financial resources to fulfill the contract;
- Contractor's ability to provide future maintenance and/or service;
- Compliance with CDBG requirements;
- Eligible for Federal contracts and Adams County Contracts;
- Other applicable factors as the Town determines necessary or appropriate in its discretion.

**EQUAL OPPORTUNITY:** The Town of Bennett intends and expects that the contracting processes of the Town and its Vendors provide equal opportunity without regard to gender, race, ethnicity, religion, age or disability and that its Vendors make available equal opportunities to the extent third parties are engaged to provide goods and services to the Town as subcontractors, vendors, or otherwise. Accordingly, the Vendor shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the contract. **Joint ventures, Minority-Owned and Women-Owned Businesses, as well as Section 3 Businesses and residents are encouraged to respond.** The Vendor shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The Vendor shall maintain records demonstrating its compliance with this article and shall make such records available to the Town upon the Town's request.

**ADDENDUMS:** Contractor is responsible for obtaining and acknowledging all subsequent addendums. Failure to submit subsequent addendum(s) shall deem the Contractor non-responsive.

**COSTS INCURRED BY PROPOSER.** Costs for developing a response to the Proposal, interviews, and contract negotiations are entirely the obligation of the Contractor and shall not be charged in any manner to the Town.

**REQUEST FOR CLARIFICATIONS.** The Town reserves the right to require clarification or further information with respect to any Proposal received, and to determine the final terms of any contract for services.

**PROTEST PROCEDURE.** Bid protests shall be submitted in writing to *Town Clerk, Town of Bennett, 355 Fourth Street, Bennett, CO 80102* within *72 hours* of bid award notification. Protests must contain at a minimum the name, address and telephone number of the protester, the signature of the protester or its representative and evidence of authority to sign; a detailed statement of the legal and factual grounds of the protest including copies of relevant data; and the form of relief requested. Within *three (3) business days* of receipt, and after consultation with legal counsel, CDBG, *Project Manager*, or others, the *Town* will respond to the protest. The *Town of Bennett* reserves the right to reject any or all bids; to waive irregularities of information in any bid; and/or to take any steps determined prudent in order to resolve the protest.



355 FOURTH STREET  
BENNETT, COLORADO  
80102-7806  
(303) 644-3249  
(303) 644-4125 - FAX

## REQUEST FOR PROPOSALS SPECIFICATION AND PRICING FORM

---

### I. SPECIFICATIONS

The Town of Bennett is soliciting proposals to install a commercial range hood, all associated venting and fire suppression devices, restroom renovations, design and installation of a new HVAC system renovations and repairs in the and installation of new energy efficient entry way doors at the Town's Community Center at 1100 West Colfax Avenue, Bennett, CO 80102.

### II. SCOPE OF WORK

1. Install Captiveaire range hood model #5418SND-2-PSP-F over the existing stove.
2. Install all needed venting to make the hood operational.
3. Install all required fire suppression devices per code to make the hood operational.
4. Install any framework needed to install the hood.
5. Make changes needed to existing walls and ceiling to install the hood.
6. New divider partitions in north restrooms w/new backing in the walls for the partitions
7. Ceramic tile in all restrooms to be 4"x4" tile 4' up the walls & 12"x12" tile on the floors
8. Replace exhaust fans and lighting in all restrooms. All lights and fans need to be controlled by motion sensors
9. All restrooms to include new fixtures, automatic hand dryers, soap dispensers, toilet tissue dispensers and sanitary seat cover dispensers
10. South restrooms to include electric door openers for ADA accessibility
11. Patch/ repair and repaint all effected drywall
12. Design and balance the entire HVAC system
13. Repair/ replace water damaged drywall in entry way area
14. Install 12"x12" ceramic tile on entry way floor
15. Install new energy efficient entry way doors and frames, door sweeps and all related weather stripping
16. Entry way doors to be equipped with electric openers for ADA accessibility

**To gain access to the facility to perform measurements, please contact Lu Herrera at 303.644.3249 ext 0 to arrange to pick up a key to the Community Center during office hours between 7:00 a.m. – 6:00 p.m. Monday through Thursday.**

### III. PROCEDURES

Contractor must be aware that this project involves the use of Community Development Block Grant (CDBG) funding and will require that CDBG regulations and associated Federal provisions, including but not limited to Section 3, Davis-Bacon, and environmental regulations, are all met in accordance with Adams County and the Federal Department of Housing and Urban Development (HUD).



355 FOURTH STREET  
 BENNETT, COLORADO  
 80102-7806  
 (303) 644-3249  
 (303) 644-4125 - FAX

**REQUEST FOR PROPOSALS  
 PRICING FORM**

**I. PRICING**

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1.			Install range hood over the existing stove.		
2.			Install all needed venting to make the hood operational.		
3.			Install required fire suppression devices per code to make the hood operational.		
4.			Install any framework needed to install the hood.		
5.			Make changes needed to existing walls and ceiling to install the hood.		
6.			New divider partitions in north restrooms w/new backing in the walls for the partitions.		
7.			Ceramic tile in all restrooms to be 4"x4" tile up the walls & 12"x12" tile on the floors.		
8.			Replace exhaust fans and lighting in all restrooms. All lights and fans need to be controlled by motion sensors.		
9.			All restrooms to include new fixtures, automatic hand dryers, soap dispensers, toilet tissue dispensers and sanitary seat cover dispensers.		
10.			South restrooms to include electric door that opens for ADA accessibility.		
11.			Patch/Repair and repaint all effected drywall.		
12.			Design and installation of the entire HVAC system.		
13.			Repair/Replace water damaged drywall in entry way area.		
14.			Install 12"x12" ceramic tile on entry way floor.		
15.			Install new energy efficient entry way doors and frames, door sweeps and all related weather stripping.		
16.			Entry way doors to be equipped with electric openers for ADA accessibility.		



355 FOURTH STREET  
BENNETT, COLORADO  
80102-7806  
(303) 644-3249  
(303) 644-4125 - FAX

**REQUEST FOR PROPOSALS  
SUBMISSION FORM**

**SUBMISSION:** It is imperative, when submitting a bid/proposal, that you address the envelope as follows:

Town of Bennett  
ATTN: Finance  
355 Fourth Street  
Bennett, CO 80102

Attn: Trish Stiles  
Treasurer  
RFP: 12-006

Does your proposal comply with all the terms and conditions? If no, indicate exceptions. YES / NO

Does your proposal meet or exceed all specifications? If no, indicate exceptions. YES / NO

State percentage of prompt payment discount, if offered. \_\_\_\_\_ %

State total bid price (include all items bid). \_\_\_\_\_

State total bid price with discount. \_\_\_\_\_

**The Town of Bennett must have on file a completed W-9 prior to doing business with Contractors. Please submit the attached form with your Proposal.**



355 FOURTH STREET  
BENNETT, COLORADO  
80102-7806  
(303) 644-3249  
(303) 644-4125 - FAX

**REQUEST FOR PROPOSALS  
APPENDIX A – CONSTRUCTION CONTRACT**

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- I. The successful Contractor will be required to sign a Construction Contract substantially similar to the contract form in Appendix A. The Town of Bennett reserves the right to add or delete provisions to the form prior to contract execution.

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355 FOURTH STREET  
BENNETT, COLORADO  
80102-7806  
(303) 644-3249  
(303) 644-4125 - FAX

## REQUEST FOR PROPOSALS

---

**SUBSTITUTE FORM W-9**  
**REQUEST FOR TAXPAYER**  
**IDENTIFICATION NUMBER AND CERTIFICATION**  
(A copy of the W-9 instructions is available upon request)

Vendor# \_\_\_\_\_

**1. NAME OF FIRM:**

---

NAME (Legal Name)

---

BUSINESS NAME (If different from above e.g. DBA)

**2. ADDRESS WHERE NOTIFICATIONS, PURCHASE ORDERS ETC. SHOULD BE MAILED**  
(if different from above):

---

NAME (As it appears on invoice)

---

ADDRESS

---

CITY, STATE, ZIP

**3. PAY TO OR REMITTANCE INFORMATION**  
(If more than one remit to address, please attach on additional page.)

---

STREET ADDRESS

---

CITY, STATE, ZIP

The Internal Revenue Service requires that you submit a Taxpayer Identification Number to comply with this regulation, please fill in the required information on this form, sign and return it to:

By fax	(303) 644-4265
By mail	Town of Bennett
	ATTN: Rachel Summers
	355 Fourth Street
	Bennett, CO 80102

**TAXPAYER IDENTIFICATION NUMBER (TIN)**

Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

OR

Federal Identification Number \_\_\_\_ - \_\_\_\_\_

Name of Business Owner (please print)  
\_\_\_\_\_

Check Appropriate Box:

- Corporation                       Partnership                       Government
- Individual/Sole Prop.               Non-Profit Organization       Other

\_\_\_\_\_  
(Must explain)

**CERTIFICATION**

Under penalties of perjury, I certify that:

- (1) The number shown on this form is my correct Tax Identification Number, and
- (2) I am not subject to backup withholding.
- (3) I am a US person (including a US resident alien)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Telephone Number (    ) \_\_\_\_\_

**NOTICE! CHECKS OR PURCHASE ORDERS WILL NOT BE ISSUED BY THE TOWN OF BENNETT UNTIL YOUR TAX PAYER ID NUMBER IS ON FILE IN THIS OFFICE!**

**FOR OFFICE USE ONLY:**

Individual/Sole Proprietorships:

- Merchandise Only                       Services
- Employee expense reimbursement     Contract Labor
- Garnishment / Child Support         Other (Explain)
- Damage awards & other reimb.       Sale of Land

For Corporation:

- Attorney
- Non Attorney

Approved:

\_\_\_\_\_  
Town Administrator

\_\_\_\_\_  
Date

## **CDBG Bid Preparation Checklist**

### **PROHIBITED RESTRICTIVE PROCEDURES**

Any action that restricts or eliminates competition is in violation of CDBG Program policy. Below are a few examples of restrictive procedures.

- Bid specifications so restrictive that they disqualify numerous potential bidders, to include brand names of products rather than "an equal to" product.
- RFPs that place unreasonable requirements on offerors in terms of necessary experience or bonding.
- Bids/RFPs written so narrowly as to ensure that only one specific bidder can compete.
- Allowing noncompetitive pricing practices between firms or affiliated companies.
- Noncompetitive awards to consultants that are on retainer contracts.
- Dividing a large procurement into small units to utilize the small purchase method in order to avoid the use of a more appropriate and competitive method.
- Abusing change orders or the contract amendment process. The review and approval of each change order/contract amendment must verify that it does not change the scope of the contract and it increases/decreases the price by less than 25% *in the aggregate*.

### **COMPETITIVE PROPOSAL PROCESS:**

1. A written Request for Proposal (RFP) must be developed.
2. Proposals must be solicited from at least three (3) (preferably more) qualified sources for reasonable competition. A list of the firms solicited must be maintained. It is strongly recommended that RFPs also be advertised in a newspaper of general circulation. The affidavit of publication should be retained in the grantee's procurement files.
3. The RFP must clearly identify the type of services/goods to be obtained and other evaluation factors. It must describe the evaluation process as well as the importance (weight) of each evaluation factor. For example, it should indicate the relative weight of experience as compared to qualifications.
4. It should identify the approximate time frame for the review and evaluation of all proposals as well as the job titles of the persons who will evaluate the proposals. For example, "All RFPs will be reviewed during the week of March 12-16 by a committee composed of one council member and two department directors."
5. The RFP must clearly identify the deadline for receipt of proposals.
6. All proposals must be date and time stamped upon receipt. Proposals received after the deadline must be returned unopened.
7. All proposals must be evaluated in writing following the method stated in the RFP. Documentation of the evaluation process must be maintained.
8. An RFP score sheet must be used to document the evaluation factors as described in the RFP. This score sheet must verify decisions to negotiate with a particular bidder or bidders. (See examples in Section 7.)
9. The award may be made to the offeror whose proposal would be most advantageous to the grantee considering all evaluation factors identified in the RFP. The award must be in writing and clearly identify any contingencies resulting from the negotiations (e.g., award contingent upon receipt of verification that the principal is a licensed architect in Arizona).
10. Unsuccessful bidders must be notified promptly in writing. This notification should include information regarding the protest procedures if it was not included in the RFP.
11. The contract/agreement resulting from the acceptance of the award may be either for a fixed price (paid when the items/services are delivered and approved) or as a reimbursement after costs are incurred (e.g., an hourly fee for legal services rendered).

Contractors may use AIA Document A305 - Contractor's Qualification Statement or this form to fulfill the qualification requirements of the bid.

### CONTRACTOR'S QUALIFICATION STATEMENT

The undersigned certifies under oath to the truth and correctness of all statements and of all answer to questions made hereinafter.

**SUBMITTED TO:**  
**ADDRESS:**

**SUBMITTED BY:**  
**NAME:**  
**ADDRESS:**

**PRINCIPAL OFFICE:**

- Corporation Joint Venture
- Partnership Other
- Individual

- Joint Venture
- Other \_\_\_\_\_

1. How many years has your organization been in business as a general contractor? \_\_\_\_\_
2. How many years has your organization been in business under its present business name? \_\_\_\_\_
  - a. Under what other or former names has your organization operated? \_\_\_\_\_
3. If a corporation, answer the following:
  - a. Date of incorporation:
  - b. State of incorporation:
  - c. President's name:
  - d. Vice-president's name(s):
  - e. Secretary's name:
  - f. Treasurer's name:
4. If an individual or a partnership, answer the following:
  - a. Date of organization:
  - b. Name and address of all partners (state whether general or limited partnership):If other than a corporation or partnership, describe organization and name principals:
6. List states and categories in which your organization is legally qualified to do business. Indicate registration or license numbers. List states in which partnership or trade name is filed.
7. We normally perform the following work with our own forces:  YES  NO
8. Have you ever failed to complete any work awarded to you? If so, note when, where, and why:  YES  NO
9. Within the last five years, has any officer or partner of your organization ever been an officer or partner of another organization when it failed to complete a construction contract? If so,
  - YES (Attach a separate sheet of explanation)
  - NO

10. On a separate sheet, list major construction projects your organization has in process, giving the name of project, owner, architect, contract amount, percent complete, and scheduled completion date.
11. On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion, and percentage of the cost of the work performed with your own forces.
12. On a separate sheet, list the construction experience of the key individuals of your organization.
13. Trade references:
14. Bank references:
15. Name of bonding company and name and address of agent:
16. Attach a financial statement, audited if available, including Contractor's latest balance sheet and income statement showing the following items:
  - a. Current assets (cash, joint venture accounts, acct rec, notes rec, accrued income, deposits, materials inventory and prepaid expenses):
  - b. Net fixed assets:
  - c. Other assets:
  - d. Current liabilities (acct pay, notes payable, accrued expenses, income tax provisions, advances, accrued salaries, accrued payroll taxes):
  - e. Other liabilities (capital, capital stock, authorized and outstanding shares par values, earned surplus, retained earnings):
  - f. Name of firm preparing financial statement and date thereof:
  - g. Is this financial statement for the identical organization named on page one?
  - h. If not, explain relationship and financial responsibility of the organization whose financial statement is provided (parent-subsidiary):
  - i. Will this organization act as guarantor of the contract for construction?

I hereby confirm and

\_\_\_\_\_  
Name of organization

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## CERTIFICATIONS

### CIVIL RIGHTS

The undersigned is fully aware that this contract is wholly or partially federally funded, and further, agrees to abide by the:

**Civil Rights Act of 1964, Title VI**, as amended, that provides no person on the basis of Race, Color, or National Origin shall be excluded from participation, denied program benefits, or subjected to discrimination.

**And, Civil Rights Act of 1968, Title VIII**, as amended, will not discriminate in housing on the basis of Race, Color, Religion, Sex, or National Origin.

**And, Rehabilitation Act of 1973, Section 504**, as amended, that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation and/or employment, denied program benefits, subjected to discrimination under any program receiving federal funds;

**And, Housing and Community Development Act of 1974, Section 109**, as amended, that no person shall be excluded from participation (including employment), denied program benefits, or subjected to discrimination on the basis of Race, Color, National Origin, Sex, Age, and Handicap under any program or activity funded in whole or part under Title I (CDBG) of the Act.

**And, Age Discrimination Act of 1975**, as amended, that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

**And, Americans with Disabilities Act of 1990**, as amended, that there shall be no employment discrimination against "qualified individuals with disabilities."

**And, Executive Order 11063**, that no person shall, on the basis of race, color, religion, sex, or national origin, be discriminated against in housing and related facilities provided with federal assistance, or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

**And, Executive Order 11246**, as amended, that no person shall be discriminated against, on the basis of race, color, religion, sex, or national origin, in any phase of employment during the performance of federal or federally assisted construction contracts in excess of \$10,000.

### EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, familial status, religious affiliation or handicap. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, national origin, familial status, religious affiliation or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this non-discrimination clause.

2. The CONTRACTOR will, in all solicitation or advertisements for employees placed by or on behalf of the CONTRACTOR for the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, creed, sex, color, national origin, familial status, religious affiliation or handicap.

3. The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by Adams County Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

5. In the event of the CONTRACTOR's non-compliance with any provision of this contract or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

6. The CONTRACTOR will include the provisions of the subparagraphs 12 (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase

order as Adams County Community Development may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Adams County Community Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

## **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS SECTION 503**

(if contract \$25,000 or over)

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The CONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
3. In the event of the CONTRACTOR's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
4. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
5. The CONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
6. The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

## **ACCESS TO RECORDS AND RECORDS RETENTION**

The undersigned certifies, to the best of his or her knowledge and belief that:

1. The individual, sole proprietor, partnership, corporation, and/or association agrees to permit the *Town of Bennett*, Adams County Community Development, the U. S. Department of Housing and Urban Development (HUD), and the Office of the Inspector General and/or their designated representatives to have access to all records for review, monitoring, and audit during normal working hours.
2. The individual, sole proprietor, partnership, corporation, and/or association agrees to retain all records for at least five years following the official Adams County Community Development "Closeout" date of the grant or the resolution of all audit findings, whichever is later.

## **CONFLICT OF INTEREST**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further, by submission of the bid or proposal that the individual or firm, certifies that:

1. There is no substantial interest, as defined by 24 CFR 85.36 and 24 CFR 84.42, with any public official, employee, agency, commission, or committee with the *Town of Bennett, or Adams County, Colorado*.
2. Any substantial interest, as defined by 24 CFR 85.36 and 24 CFR 84.42, with any public official, employee, agency, commission, or committee (including members of their immediate family) with the *Town of Bennett or Adams County, Colorado* that develops at any time during this contract will be immediately disclosed to the *Town of Bennett and Adams County Community Development*.

## **FLY ASH CERTIFICATION**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further by submission of this bid certifies that the percentage of fly ash in the concrete or cement is or will be consistent with the amounts required by the EPA Guidelines and/or Code of Federal Register 9CFR) for federal procurement of cement and concrete containing fly ash, which is attached.

## **ANTI-LOBBYING CERTIFICATION**

The undersigned certifies, to the best of his or her knowledge and belief that:

- 1.** No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3.** The undersigned shall require that the language of this Certification be included in the award documents for all sub-awards to all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

## CERTIFICATIONS SIGNATURE FORM

***Return this page with proposal.***

These Certifications (Civil Rights, Equal Employment Opportunity, Affirmative Action for Handicapped Workers -Section 503, Fly Ash, Access to Records and Records Retention, Conflict of Interest, Lobbying) are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of these Certifications is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required Certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
(Typed Name of Official)

\_\_\_\_\_  
(Signature of Official)

\_\_\_\_\_  
(Typed Name of Firm)

\_\_\_\_\_  
(Date)

### "Section 3 Clause"

24 CFR Part 135, §135.38. This clause must be included in all Section 3 covered contracts.

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Grantee: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Activity No.: \_\_\_\_\_

Activity Name: \_\_\_\_\_

**SECTION 3 BUSINESS SELF-CERTIFICATION**

**THIS DOCUMENT IS TO BE SUBMITTED BY THE BIDDER WITH THE BID DOCUMENTS, IF APPLICABLE**

**A. Basis for Self-Certification**

The \_\_\_\_\_, located at \_\_\_\_\_  
(name of business) (address)

hereby certifies that it is a Section 3 business, as defined by HUD, on the basis of the following:  
(check all applicable)

- 1.  51% or more ownership by Section 3 residents;
- 2.  At least 30% of the current permanent, full-time employees are Section 3 residents or were Section 3 residents at the time they were hired (within the past three years);
- 3.  Is committed to subcontracting more than 25% of the total dollars awarded by Adams County/Town of Bennett to business concerns that meet the qualifications indicated in 1. or 2. above

**B. Certifications**

I, the undersigned, hereby certify that:

- 1. I have the legal authority to make these certifications on behalf of \_\_\_\_\_;  
(name of business)
- 2. Documentation exists to verify the basis for the Self-Certification indicated in A. above;
- 3. This documentation will be made available to the Town of Bennett, Adams County Community Development, HUD or its designated representatives, during normal business hours, upon request;
- 4. This documentation will be maintained for at least five years after completion of the requirements of the contract provided by The Town of Bennett;
- 5. The information provided in A. above is true and accurate to the best of my knowledge; and
- 6. I am aware that both I and the business identified above, are liable to civil and criminal penalties for willful falsification of any of the information provided in this document.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

Grantee: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Activity No.: \_\_\_\_\_

Activity Name: \_\_\_\_\_

**THIS DOCUMENT IS TO BE SUBMITTED BY THE BIDDER WITH THE BID DOCUMENTS**

**SECTION 3 ASSURANCES**

1. I, the undersigned, \_\_\_\_\_, as Official Representative of \_\_\_\_\_, agree to comply with  
(Printed Name) (Contractor)

Section 3 requirements, to include recordkeeping and reporting, for the project known as \_\_\_\_\_. It is understood that failure to comply may result in the following sanctions: cancellation, termination or suspension of this contract in whole or in part.

**2. Prime Contractor**

a. The TOTAL number of positions needed in this project: \_\_\_\_\_

Details of occupational categories provided in Attachment A  (yes)

b. The number of these positions to be filled by regular, permanent employees: \_\_\_\_\_

c. The number of positions projected to be filled by low income area residents: \_\_\_\_\_

Details of occupational categories provided in Attachment A  (yes)

**3. Subcontractors/Vendors**

a. The number of subcontractors projected to be utilized for this project: \_\_\_\_\_

b. The number of subcontractors projected to be Section 3 businesses: \_\_\_\_\_

c. The number of businesses/suppliers projected to be utilized: \_\_\_\_\_

Dollar amount: \$ \_\_\_\_\_

d. The number of businesses/suppliers projected to be Section 3 businesses/suppliers: \_\_\_\_\_

Dollar amount: \$ \_\_\_\_\_

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

Grantee: \_\_\_\_\_  
 Activity No.: \_\_\_\_\_

Contract No.: \_\_\_\_\_  
 Activity Name: \_\_\_\_\_

**Section 3**  
**ESTIMATED PROJECT WORK FORCE BREAKDOWN**

JOB CATEGORY	TOTAL ESTIMATED POSITINS NEEDED FOR PROJECT	NO. OF POSITIONS OCCUPIED BY PERMANENT EMPLOYEES	NO. OF POSITIONS NOT OCCUPIED	NO. OF POSITIONS TO BE FILLED WITH SECTION 3 RESIDENTS	APPROXIMATE HIRING DATE
Supervisor					
Professional					
Technical					
Office/Clerical					
Others					
<b>TRADE:</b>					
Journeyman					
Apprentices					
Trainees					
Others					
<b>TRADE:</b>					
Journeyman					
Apprentices					
Trainees					
Others					
<b>TOTALS</b>					

**Section 3 Resident**

Individual residing within the Section 3 Area whose family income does not exceed 80% of the median income in the Metropolitan Statistical Area or the county if not within a MSA in which the Section 3 covered project is located. See attached income schedule.

\_\_\_\_\_  
 Person Completing Form                      Date

\_\_\_\_\_  
 Company

\_\_\_\_\_  
 Company Address

\_\_\_\_\_  
 Project Name and Number

\_\_\_\_\_  
 Telephone Number E-mail

**CDBG CHECKLIST  
SECTION 3**

**CDBG Contract #:** \_\_\_\_\_

**Activity No./Name:** \_\_\_\_\_

**Date/Initial**      **Item**

\_\_\_\_\_ Contract (include a copy of the Section 3 covered contract and bid package in this file, the page from the bid/contract that relates to Section 3, or indicate where a copy can be found, e.g., construction contract file)

\_\_\_\_\_ List of qualified Section 3 businesses/vendors

\_\_\_\_\_ Documentation of Section 3 business eligibility determination

\_\_\_\_\_ List of qualified Section 3 residents

\_\_\_\_\_ Documentation of Section 3 residents' eligibility determination

\_\_\_\_\_ Outreach to Section 3 businesses and residents through flyers, meetings, PHA's. May use Public Notice (S3P) forms and Section 3 Notice Documentation (S3R-1).

\_\_\_\_\_ Other actions taken to address Section 3 (list below):

\_\_\_\_\_ Section 3 Notice Documentation (S3R-1)

\_\_\_\_\_ Section 3 Business Utilization Report (S3R-2); indicate if in Other File (as submitted w/Req for Payment)

\_\_\_\_\_ Section 3 Applicant and New Hire Employment Report (S3R-3); indicate if in Other File (as submitted w/Req for Payment)

\_\_\_\_\_ Related Correspondence

\_\_\_\_\_ Complaints

## CONTRACTOR / SUBCONTRACTOR OWNERSHIP FORM

**Name of Project:**

**Date:**

Name of Business	Name of Principal Owner	Address of Business Phone / Fax #	Tax I.D. #	Contract Amount	Racial Ethnic Code (see below)	Greater Than 51% Women Owned Business?
<u><b>PRIME CONTRACTOR</b></u>						
<u><b>SUBCONTRACTORS</b></u>						

**Racial/Ethnic Codes**

- 1 = White Americans
- 2 = Black Americans
- 3 = Native Americans
- 4 = Hispanic Americans
- 5 = Asian/Pacific Americans
- 6 = Other

# Federal Labor Standards Provisions

U.S. Department of Housing  
and Urban Development  
Office of Labor Relations

## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and  
(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part

of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (l) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll

period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the

journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(III) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (I) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(II) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(III) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph

graph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

**(3)** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## **Labor Relations Internet Sites**

### **Davis-Bacon Wage Decisions**

<http://www.wdol.gov/index.html>

### **Payroll form and instructions – WH-347 – Form Filler**

<http://www.dol.gov/esa/forms/whd/WH347.pdf>

NOTE: Copy of Payroll form is also in the Contractors Guide Book

### **Posters**

- The Davis-Bacon Act – Notice to all Employees Working on a Federal or Federally Financed Construction Projects
- Equal Employment Opportunity

<http://www.dol.gov/osbp/sbrefa/poster/main.htm>

### **HUD Forms - HUDCLIPS**

[http://www.hudclips.org/sub\\_nonhud/html/forms.htm](http://www.hudclips.org/sub_nonhud/html/forms.htm)

### **Debar Check List**

#### **List of Parties Excluded From Federal Procurement and Non-procurement Programs**

<http://epls.arnet.gov>

### **Office of Labor Relations Home Page – Rocky Mountain Area Office**

<http://www.hud.gov/offices/olr/>

- Labor Relations Library: guides, forms and letters.
- Semi-Annual Enforcement Report Instructions.
- HUD's Labor Standards Administration and Enforcement Guidelines.
- Department of Labor.
- HUD's Contractor's Guide to Davis-Bacon Wage Requirements.
- A Practical Guide for States, Indian Tribes and Local Agencies.



# **MAKING DAVIS-BACON**

*A Practical  
Guide  
for States,  
Indian Tribes  
and*

**JUNE 2001**





# MAKING DAVIS-BACON WORK

*A Practical Guide  
for States,  
Indian Tribes and  
Local Agencies*

## Streamlining Davis-Bacon

HUD's Streamlining Davis-Bacon Initiative took shape following a comprehensive review and analysis of the paperwork, processes, and procedures which had evolved over time both at the HUD level as well as among the almost 6000 State and local agencies to which HUD has delegated day-to-day labor standards administration and enforcement responsibilities. Our review objectives were simple. We wanted to define exactly what HUD and its client agencies were doing to protect the statutory rights of construction workers to be paid prevailing wage rates. Second, with that information and feedback, we wanted to implement improved performance and accountability measures by making systemic changes aimed at achieving more focused and effective and efficient use of scarce resources.

### What we found...

What we found in our review was no surprise. There were widely divergent approaches, redundant processes, and a multitude of forms and paperwork requirements. Basically, we found a law enforcement system which had become encrusted with layers upon layers of requirements but which had lost a clear sight of its purpose. Rather than a responsive, accountable, and dynamic law enforcement system, there had developed a ponderous, static, and too often arbitrary bureaucracy. We had to take action.

### What we did...

First, we identified and redefined our primary labor standards objectives and identified who is/are responsible for their implementation. Second, we stripped away unnecessary procedures, policies, and paperwork which did not measurably contribute to those objectives. Finally, we initiated a marketing and implementation campaign communicating our new approach to workers' rights protection which we call *Streamlining Davis-Bacon*. This Guide has been developed as part of our communications strategy and describes in detail what Streamlining Davis-Bacon means to you in practical terms. It will help you develop organizational and administrative approaches which best work for you while still enabling you to meet your labor standards contractual responsibilities in the administration of HUD-assisted programs as efficiently as possible. It will also be useful to you as a training tool and ready reference for compliance staff.

### Whom to contact...

The HUD Labor Relations Field staff is your support team available to provide training and technical assistance in the administration of HUD programs subject to Federal labor standards provisions. Please call upon the HUD Labor Relations Field staff for your jurisdiction at any time. Also, please visit the Office of Labor Relations at the **HUD Home Page** on the World Wide Web. At this site you will have ready access to publications, forms, the latest policy letters, and related links which will help you administer labor standards. Most of the publications and forms referenced in this Guide are available in the HUD Labor Relations Library at:

[www.hud.gov/offices/olr](http://www.hud.gov/offices/olr)

You can also obtain additional copies of this Guide and other publications by telephone from HUD's Customer Service Center at (800) 767-7468.



# MAKING DAVIS-BACON WORK



*A Practical Guide  
for States,  
Indian Tribes and  
Local Agencies*



## The Basics

As part of HUD 2020 Management Reform Plan, the Office of Labor Relations took a bold but measured look at our overall mission and what we and our client agencies were doing on a day-to-day basis to carry it out. We identified five **Key Labor Standards Objectives** – the basics of what it is that we must accomplish in order to protect workers' rights. We also identified all of the policies, procedures and paperwork at our disposal – what we do ourselves and what we impose on contractors. Under Streamlining, we eliminated those policies, procedures and paperwork requirements that were not statutory or regulatory and that did not contribute to one or more of the Key Objectives.

## Key Labor Standards Objectives

- I. Apply Davis-Bacon requirements properly.** Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.
- II. Through education and advice, support contractor compliance with labor standards.** Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.
- III. Monitor contractor performance.** Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.
- IV. Investigate probable violations and complaints of underpayment.** Thoroughly explore any evidence of violations, especially allegations of underpayment.
- V. Pursue debarment and other available sanctions against repeat labor standards violators.** Carry-out a no-tolerance policy toward contractors who violate prevailing wage laws.

## Local Agency Responsibilities for Davis-Bacon Labor Standards

Local contracting agencies (LCAs) that administer HUD programs agree to administer and enforce Davis-Bacon requirements as a condition for receiving HUD program assistance. LCAs have the following responsibilities:

- 1. Designate appropriate staff** (*aka Contract Administrator*) before the start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD Field Office Labor Relations.
- 2. Establish a construction contract management system** which meets the standards of Part 85 (24 CFR – HUD regulations), Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

3. **Ensure that all bid documents, contracts and subcontracts contain Federal labor standards provisions and the applicable Davis-Bacon wage decision.**
4. **Ensure that no contract is awarded to a contractor that is ineligible** (e.g., debarred) for Federally-assisted work.
5. **Conduct on-site inspections including interviews with laborers and mechanics** employed on the construction project. Ensure that the applicable Davis-Bacon wage decision and the Department of Labor’s “Notice to Employees” are posted at the job site.
6. **Review certified payroll reports and related documentation.** Identify any discrepancies and/or violations. Ensure any needed corrections are made promptly.
7. **Maintain full documentation** of Federal labor standards administration and enforcement activities.
8. **Refer potential criminal or complex investigations to HUD**, in addition to Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages assessments for overtime violations and debarment recommendations.
9. **Comply with all HUD requirements** concerning special statutory, program and/or other requirements.
10. **Prepare Federal labor standards enforcement reports** as required in Department of Labor (DOL) regulations (29 CFR, Part 5, §5.7).

## **What Local Agencies Need to Carry Out These Responsibilities**

In addition to basic knowledge about labor standards administration and enforcement, LCAs need basic reference and guidance materials. Many of these materials are available on-line. A complete list of website addresses referenced in this Guide is provided in the Appendix (Table ii). Also, the HUD Labor Relations Field Staff can assist you in obtaining hard copies of any materials offered in the Labor Relations Library on the HUD Homepage.

## **Labor Relations Reference and Guidance Materials**

- **Specific Davis-Bacon Related Act (statute)** for the program involved. The clauses containing the Davis-Bacon labor standards provisions for each HUD program are key to making proper decisions concerning applicability. Determining whether Davis-Bacon wage rates are applicable in specific cases may be the most difficult task that LCAs face on a day-to-day basis. Excerpts from the HUD Related Acts – the labor standards provisions – may be found in the Appendix (Exhibit 1) to this Guide. In addition, you’ll find one-page treatments explaining the factors of applicability (how the language of the labor standards clauses is interpreted and applied in real situations) for CDBG and HOME (Exhibit 2). Similar treatments are being developed for public and Indian housing. These treatments will be available on-line at the HUD Labor

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Relations Library: [www.hud.gov/olr/olr.html](http://www.hud.gov/olr/olr.html) The full text of HUD program statutes including the HUD Davis-Bacon Related Acts are available on-line in Basic Laws (on Housing and Community Development) at: [www.house.gov/banking/bashlaws.htm](http://www.house.gov/banking/bashlaws.htm)

- **HUD Regulations: 24 CFR;** Relevant Parts for the program involved. Many times the regulations will contain further information about Davis-Bacon aspects of the program. HUD regulations are available on-line at: [www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)
- **DOL Regulations: 29 CFR;** Parts 1, 3, 5, 6 & 7. These regulations contain policy guidance and instructions for all agencies, including local contracting agencies, in the administration and enforcement of Davis-Bacon wage and reporting requirements. These DOL regulations are available on-line at the DOL homepage at: [www.dol.gov/esa/public/regs/cfr/whd.cfr.htm](http://www.dol.gov/esa/public/regs/cfr/whd.cfr.htm)
- **Labor Relations Letters.** This is a special directives series designed to provide current and thorough guidance on Davis-Bacon issues in HUD programs. Popular topics include Davis-Bacon applicability under HOME, and prevailing wage requirements concerning self-employed laborers and mechanics. Labor Relations Letters are available on-line at the HUD Labor Relations Library.
- **Labor Relations Desk Guides.** These Guides are replacing in parts the HUD Handbook 1344.1, Federal Labor Standards in HUD Programs. One is HUD's *Contractor's Guide to Davis-Bacon* – an easy to use resource that explains Davis-Bacon requirements and what contractors must do to comply. These Guides are also available at the HUD Labor Relations Library.
- **On the Mark! Series.** Also available at the Labor Relations Library, this series contains simple, one-page suggestions containing time-saving tips to improve efficiency and effectiveness including new technologies and services available through the Internet.

## The Basic Elements – Labor Standards Administration and Enforcement

### Labor Standards Administration

Involves the activities that take place primarily before construction begins. Administration sets the stage for the enforcement activities that occur during the construction phase.

- I. **Determine Davis-Bacon applicability.** The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Applicability (in the Appendix) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon but there are some exceptions. The best and safest approach is whenever the contract/project involves construction work that is valued in excess of \$2,000 to assume that Davis-Bacon rates will be applicable and then look more closely to see if there's any reason for non-coverage.



Assuming that a determination has been made that Davis-Bacon wage rates are applicable:

2. **Prepare the bid documents/contract.** The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and its own labor standards clauses. These are usually bound into the contract specifications.
  - a. **Davis-Bacon Wage Decisions.** The Davis-Bacon wage decision is a listing of various construction work job classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. Current Davis-Bacon wage decisions are available on-line at no cost at the Government Printing Office web site. The direct address for Davis-Bacon wage decisions is: <http://www.access.gpo.gov/davisbacon> (See *On the Mark!* OTM #7 (3/01) for more information about this on-line service.) You can also contact the HUD Labor Relations staff for assistance and/or for a copy of a Davis-Bacon wage decision.
  - b. **The labor standards clauses.** The labor standards clauses obligate the contractor to comply with Davis-Bacon wage and reporting requirements and provide for remedies and sanctions should violations occur. HUD has standard forms that contain the labor standards clauses appropriate for different programs: the HUD-4010, Federal Labor Standards Provisions, for CDBG and HOME; and the HUD-5370 for Public and Indian housing. These forms are available on-line at: [www.hudclips.org/subscriber/html/forms.htm](http://www.hudclips.org/subscriber/html/forms.htm)
3. **Verify contractor eligibility.** Once you have selected the contractor to whom you want to award the contract, you must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. You only need to verify the eligibility of the prime contractor. The U.S. General Services Administration maintains a list of debarred contractors which can be accessed on-line at: <http://epls.arnet.gov> (See *On the Mark!* OTM #6 (6/97) for more information about on-line verification.)
4. **Provide contractor training.** Make certain the contractor understands its responsibilities for Davis-Bacon compliance: The principal contractor (also referred to as the **prime** or **general contractor**) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. HUD has published a **Contractor's Guide to Davis-Bacon** for this purpose which provides basic information and instructions to contractors concerning Davis-Bacon wage and reporting requirements. Hard copies of the Guide are available from the HUD Labor Relations Field Staff. In addition, the Guide is available in a download-able PDF file at the HUD Labor Relations Library.

You may also wish to provide formal training separate from the contracting process for contractors who are interested in performing work on your HUD-assisted contracts and want to learn more about what is involved.

## Labor Standards Enforcement

Involves the activities that take place during construction to ensure contractor compliance.

- 1. Posting the wage decision and Notice to Employees.** The contractor is required to display on the job site a copy of the applicable Davis-Bacon wage decision and the form WH-1321, *Notice to Employees*. The purpose of this posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage rate for their trade and to inform them of who to contact (the contract administrator) if they have any questions or want to file a complaint. HUD also has prepared a pamphlet explaining the rights of workers to be paid prevailing wages which you may make available to laborers and mechanics on the job site or through mailings.
  - a. Project Wage Rate Sheet.** Many wage decisions are multi-paged and cover several counties and/or more than one type of construction. To make this vital information easier to read and understand, contract administrators can offer a Project Wage Rate Sheet – a one-page listing of only the wage rates applicable to the specific project involved – for posting on the job site. A blank copy of the Project Wage Rate Sheet is in the Appendix (Exhibit 3) to this Guide.
  - b. Notice to Employees.** The Notice to Employees form is available on-line at HUDClips ([www.hudclips.org/subscriber/html/forms.htm](http://www.hudclips.org/subscriber/html/forms.htm)). The Notice is also available in Spanish text from the HUD Labor Relations Field Staff.
- 2. Conduct on-site interviews with laborers and mechanics.** The contract administrator or a designee (such as an agency construction inspector) must periodically conduct interviews with the construction workers on the job site. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the hours they work, the type work they perform and the wages they receive. Information gathered during the interviews is recorded on form HUD-11, Record of Employee Interview. The HUD-11's are compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information. HUD-11 forms are available on-line in a fillable format in HUDClips (see website list in the Appendix).
- 3. Review contractor and subcontractor certified payroll reports.** In addition to comparing HUD-11's to the certified payroll reports, the contract administrator reviews the payroll reports generally to ensure that all laborers and mechanics are being paid no less than the wage rates contained on the applicable Davis-Bacon wage decision for the type of work they perform. Contract administrators should be particularly alert for indications of payroll falsification – misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates an employer (contractor or subcontractor) is aware of their obligations, is knowingly underpaying their employees and is attempting to avoid detection of the violations.
  - a. Discrepancies and/or underpayments on the payrolls.** Some underpayments and other errors can appear on the face of the payroll (i.e., do not involve falsification). In these cases, the contract

administrator contacts the prime contractor and provides instructions as to what steps should be taken to correct the payroll and to pay any back wages that may be due to the affected workers.

**b. Indications of falsification on payrolls.** Information reported on payrolls that indicates falsification suggests much more serious violations in terms of the amount of back wages that may be due and the number of employees effected. Such cases most often warrant investigation which can include on-site interviews with the workers, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case. HUD has prepared a list and explanation of four common falsification indicators that are easy to detect during payroll “spot-checks.” See Exhibit 5 in the Appendix at the back of this Guide.

- 4. Investigate probable violations and complaints of underpayment.** Contract administrators must investigate probable violations – particularly involving falsification of payrolls and complaints alleging underpayments.
- 5. Recommend debarment against repeat violators.** HUD has implemented a no-tolerance policy against contractors who repeat violations of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for overtime violations) which may be assessed. In addition, the employer must provide a written assurance of future compliance. If the employer promptly completes these corrective actions, HUD will not object if the LCA *does not* recommend debarment against the employer unless there are extenuating circumstances which warrant debarment. If the employer is found in violation again, the LCA must require full correction of any underpayments and payment of CWHSSA liquidated damages computed **and** a debarment recommendation made by the LCA against the employer is expected.
- 6. Prepare and submit enforcement reports.** In accordance with DOL regulations (29 CFR, Part 5, §5.7), the contract administrator must prepare enforcement reports on any case where an employer (contractor or subcontractor) has underpaid its employees by \$1,000 or more or where there is reason to believe the violations are aggravated or willful; and semi-annually concerning all Davis-Bacon labor standards administration and enforcement activities involving all Federal agencies and programs.
  - a. Employer-based enforcement reports.** These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all Federal and local agencies. Secondly, we use an enforcement report to refer to the Wage and Hour Administrator investigative findings which are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Third, we use an enforcement report to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA overtime violations. (See *Labor Relations Letter LR-92-02* for additional guidance concerning employer-based enforcement reports.)

- b. Semi-annual Enforcement Reports.** All Federal agencies and LCAs administering programs covered by Davis-Bacon wage requirements must report to DOL 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 HUD-assisted Davis-Bacon construction activity. A copy of the Semi-Annual Report form and instructions for LCAs are included in the Appendix (Exhibit 4) and are available on HUD's Homepage in the Labor Relations Library.

## Ten Steps to Streamlining Davis-Bacon – What and Why

You may have already noticed in the discussions above some of the streamlining measures HUD has put in place. These measures are described in more detail here:

### 1. LCAs do not have to obtain wage decisions from HUD.

**Prior practice:** Previously, LCAs were required to obtain a Davis-Bacon wage decision for each contract/project from HUD Labor Relations and were required to submit a form (SF-308, Request for Wage Determination) in order to make the request.

**Streamlined:** HUD now allows LCAs to obtain Davis-Bacon wage decisions from any source available to them. For example, LCAs can obtain wage decisions on-line at the GPO web site. Or the LCA can use a copy of the wage decision they already may have on file (provided the copy is still current). LCAs that wish to continue obtaining wage decisions from HUD can make the request by telephone, fax, mail or email. HUD can send the applicable wage decision back to the LCA by any of these means also. LCAs can obtain wage decisions immediately from the GPO web site and, in most cases, depending on the form of delivery requested by the LCA (e.g., email) LCAs should be able to obtain wage decisions from HUD within 24 hours or less.

### 2. Preconstruction Conferences for labor standards purposes are optional.

**Prior practice:** LCAs were required to hold a preconstruction conference (PCC) for each contract/project. During the PCC, the labor standards applicable to the project were described in detail. A copy of an attendance roster and complete minutes of the PCC were required in the contract file.

**Streamlined:** HUD acknowledges that there are many good reasons to hold a PCC such as discussing construction inspections, progress and contractor payment requirements, Section 3 employment and training and other issues particular to the project. However, HUD has determined that the time and resources used to conduct and document PCCs for labor standards purposes have not yielded measurably better results.

Many contractors have prior Davis-Bacon contract experience and have demonstrated successful performance. These contractors don't require the repetitive basic training such as provided in most PCC presentations. Basic training for contractors new to Davis-Bacon projects can

be provided more efficiently through printed guidelines such as HUD's *Contractor's Guide to Davis-Bacon*. Contractors who intend to comply can become familiarized with the fundamentals through the Guide and contact the contract administrator concerning any questions specific to the project. Contractors who understand the requirements and who may choose not to comply will in all likelihood not be persuaded to full compliance with a PCC labor standards presentation.

**3. Project Wage Rate Sheets are offered for Davis-Bacon projects.**

**Prior practice:** HUD considered Davis-Bacon wage decisions inviolate and strongly discouraged any efforts to simplify or translate for any reason the content of a wage decision. As discussed earlier in this Guide, many Davis-Bacon wage decisions are lengthy and can cover several counties and/or types of construction work. In other words, not all of the information contained in a Davis-Bacon wage decision is relevant to the specific project to which it applies. HUD required LCAs to utilize the complete text of wage decisions at all times even though the wage decision frequently contained many pages of irrelevant information.

**Streamlined:** Besides being in the construction contract to obligate the compliance of the prime contractor and any subcontractors (where HUD still recommends use of the full wage decision text in most cases), there are three important uses for the applicable Davis-Bacon wage decision. One is for the contractor's and any subcontractors' understanding about the specific wage rates that must be paid. The second is for posting at the job site so that the laborers and mechanics understand their rights. The third is for contract administrator's use in reviewing certified payroll reports.

A Project Wage Rate Sheet is a one-page, easy to read listing of the work classifications and wage rates that are applicable to the project. This one-page listing is much more user-friendly than the full-text wage decision for these three uses: A Project Wage Rate Sheet spells out more clearly the work classifications and wage rates contained in the wage decision for the contractor and subcontractors. The Project Wage Rate Sheet is much easier for laborers and mechanics to understand so that they can tell whether they are paid properly. And last, a Project Wage Rate Sheet – a one-page listing – is more helpful as a ready reference for contract administrators reviewing payroll reports.

LCAs can prepare a Project Wage Rate Sheet for contracts using the copy in the Appendix. The Project Wage Rate Sheet should be prepared only after the wage decision has been "locked-in" by contract award or start of construction, as applicable. HUD Labor Relations staff are available to provide assistance to LCAs in preparing Project Wage Rate Sheets.

**4. Eliminate certain unnecessary or duplicative processes and notices to HUD.**

**Prior practice:** LCAs were required to send to HUD a start of construction notice and a final compliance report for each project. LCAs also were required to date stamp certified payrolls on receipt, and to date and initial certified payrolls when the payrolls were reviewed.

**Streamlined:** HUD has eliminated the start of construction notice and final compliance report. The important information collected in these reports is already captured in enforcement reports required by DOL regulations, therefore, the reports were duplicative. (See Streamlining measure #10, below.) In addition, date stamping payrolls on receipt and dating and initialing payrolls on review are actions inconsistent with a results-oriented approach and therefore are no longer mandated.

## 5. An LCA can develop its own enforcement file system.

**Prior practice:** LCAs were required to utilize filing systems mandated by HUD involving certain numbers and labeling of files and other file maintenance conditions.

HUD believes that LCAs can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls are preserved not less than three years after completion of the project and the resolution of any enforcement actions which may carry over after completion. In addition, the files must be maintained in such a way that the LCA can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the LCA must be able to demonstrate to a HUD monitor where it is documented that the eligibility of the prime contractor was verified for each contract.

## 6. LCAs can target on-site interviews with laborers and mechanics.

**Prior practice:** LCAs were required to conduct on-site interviews with a “representative sampling” of all laborers and mechanics on each project. HUD did not offer a consistent guideline as to what constituted a “representative sampling.”

**Streamlined:** HUD is much more interested in using on-site interviews as a proactive enforcement tool than as a means to meet a “representative sampling” quota. Rather than conducting interviews randomly for the sake of assembling a sample, LCAs are encouraged to focus interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific on-going investigation. HUD realizes that such focusing may mean that less on-site interviews may be conducted randomly; HUD considers focusing a far more effective means of utilizing on-site interview resources.

## 7. Payroll reviews limited to spot-checks and HUD-II comparison; the Goal: to detect falsification.

**Prior practice:** LCAs were required to thoroughly review each certified payroll submitted for each project. Any discrepancy, omission or error in the record had to be noted and corrected regardless of its significance.

**Streamlined:** HUD found much more serious violations involving more underpaid workers and significantly more wage restitution could be missed because the contract administrator was over tasked with HUD-

mandated payroll minutiae. HUD recognizes that it is not possible to conduct 100% payroll reviews, therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of effected workers and the amount of underpayment) than violations that appear on the face of the payroll. Accordingly, HUD has prioritized payroll reviews so that the objective is to detect falsification and so that our enforcement activities will yield the greatest impact. HUD has developed guidance on how to detect falsification through spot-checks and HUD-11 interview comparison. See *Payroll Falsification Indicators* in the Appendix (Exhibit 5).

**8. Routine payroll review results can be communicated to the prime contractor by telephone and documented with a record to the file.**

*Prior practice:* LCAs were required to document each payroll review with a written notice to the prime contractor concerning any and all corrections that were needed.

**Streamlined:** Many times, the types of deficiencies which come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, etc.) with the prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally – assuming the cooperation of both sides – include a missing payroll report or missing apprenticeship certificate, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor’s cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal means.

**The last two Streamlining measures are about how we will better use the resources we have to meet our key objectives.** Through Streamlining, we’ve eliminated substantial amounts of paperwork and processes so that we can redirect those resources to other activities that will produce improved Davis-Bacon enforcement and accountability.

**9. Strenuously enforce Davis-Bacon requirements aiming enforcement activities at willful violators. Recommend debarment against repeat violators.**

*Prior to Streamlining,* our enforcement activities were not as focused and therefore were not as effective. The greatest threat to construction workers receiving the statutorily-mandated prevailing wage for their craft is from employers who know what is required, choose not to pay the required prevailing wage rates and falsify certified payroll reports to conceal the underpayments. Such willful violators see the workers’ underpayment as their own gain and engage in deception to increase this gain. In addition, willful violators that successfully escape detection and are not required to pay prevailing wages will continue to bid on Davis-Bacon contracts until their violations are disclosed and administrative sanctions such as debarment are imposed.

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HUD has made it a priority to target labor standards enforcement activities at willful violators (i.e., employers that falsify certified payrolls) and to recommend debarment against repeat violators. Barring aggravated circumstances, such as requiring kickbacks of wages from employees, contract administrators that issue findings of underpayment against a willful violator for a first offense will require from the employer a written statement assuring future compliance in addition to full wage restitution for all underpaid employees. If the employer is found in violation of labor standards again, contract administrators will recommend debarment based in part upon the breach of assurance of future compliance secured after the prior violation.

## **10. Improve reporting systems on labor standards administration and enforcement.**

These reports are required by regulation and are important vehicles for recommendations concerning the disposition of investigative findings and debarment against employers that violate Davis-Bacon requirements. These reports also allow the Secretary of Labor to gather important information about government-wide Davis-Bacon contracting and enforcement.

HUD has relieved LCAs of certain reporting and processing requirements which were duplicative or unnecessary in order to promote full, timely and accurate LCA participation in the enforcement reporting system required by DOL regulations. In this way we enhance our accountability for Davis-Bacon labor standards administration and enforcement and can better measure our performance in applying Davis-Bacon wage standards where applicable and in protecting the right of the laborers and mechanics to receive prevailing wages when employed on covered work in HUD programs.



## **Davis-Bacon – Related Acronyms and Symbols**

CDBG	– Community Development Block Grant
CFR	– Code of Federal Regulations
CPR	– Certified Payroll Report
CWHSSA	– Contract Work Hours and Safety Standards Act
DBA	– Davis-Bacon Act
DBRA	– Davis-Bacon and Related Acts
DOL	– Department of Labor
FHA	– Federal Housing Administration
FLSA	– Fair Labor Standards Act
HUD	– Housing and Urban Development (Department of)
IHA	– Indian Housing Authority
IHBG	– Indian Housing Block Grant
LCA	– Local Contracting Agency
LDP	– Limited Denial of Participation
O/T	– Overtime
PHA	– Public Housing Agency
S/T	– Straight-time
SAC	– State Apprenticeship Council/Agency
TDHE	– Tribally-Designated Housing Entity
§	– Section
¶	– Paragraph

## **Davis-Bacon – Related Web Sites**

Basic Laws on Housing and Community Development:

**[www.house.gov/banking/bashlaws.htm](http://www.house.gov/banking/bashlaws.htm)**

HUD Office of Labor Relations (Labor Relations Library):

**[www.hud.gov/offices/olr](http://www.hud.gov/offices/olr)**

HUD Regulations:

**[www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)**

HUDClips (Forms):

**[www.hudclips.org/subscriber/html/forms.htm](http://www.hudclips.org/subscriber/html/forms.htm)**

DOL Davis-Bacon and Related Acts Homepage:

**[www.dol.gov/dol/esa/public/programs/dbra/index.html](http://www.dol.gov/dol/esa/public/programs/dbra/index.html)**

Davis-Bacon Wage Decisions:

**[www.access.gpo.gov/davisbacon](http://www.access.gpo.gov/davisbacon)**

DOL Regulations:

**[www.dol.gov/dol/esa/public/regs/cfr/whdcfr.htm](http://www.dol.gov/dol/esa/public/regs/cfr/whdcfr.htm)**

DOL Forms:

**[www.dol.gov/dol/esa/public/forms/whd/index.htm](http://www.dol.gov/dol/esa/public/forms/whd/index.htm)**

**HUD Program Davis-Bacon Related Acts**  
**Programs administered by local contracting**  
**agencies (LCA's):**

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**CDBG: Housing and Community Development Act of 1974, as amended; Section 110\*:**

- (a) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.... Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units....
- (b) Subsection (a) shall not apply to any individual that—
  - (1) performs services for which the individual volunteered;
  - (2) (A) does not receive compensation for such services; or  
(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and
  - (3) is not otherwise employed at any time in the construction work.

\* Section 107(e)(2) of the HCDA permits the Secretary of HUD to waive the provisions of Section 110 in connection with grants to Indian tribes. This waiver action was taken and can be found in HUD regulations at 24 CFR §1003.603.

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**HOME: National Affordable Housing Act of 1990;**  
**Section 286:**

- (a) **In General.** Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of affordable housing involved,....
- (b) **Waiver.** Subsection (a) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

## EXHIBIT I

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### **Public Housing: U.S. Housing Act of 1937, as amended (USHA); Section 12\*:**

- (a) Any contract for loans, contributions, sale, or lease pursuant to this Act ....shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.
- (b) Subsection (a) and the provisions relating to wages (pursuant to subsection (a)) in any contract for loans, annual contributions, sale, or lease pursuant to this Act, shall not apply to any individual that –
  - (1) performs services for which the individual volunteered;
  - (2) (A) does not receive compensation for such services; or  
(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and
  - (3) is not otherwise employed at any time in the construction work.

\*Section 12(a) of the USHA also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of PHA low-income housing projects.

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### **Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA); Section 104(b)\*:**

- (1) **In general.** Any contract or agreement for assistance, sale, or lease pursuant to this Act...shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act;...); shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.
- (2) **Exceptions.** Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this Act, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

- (3) Application of Tribal Laws.** Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

\* Section 104(b)(1) of NAHASDA also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of NAHASDA-assisted affordable housing projects.

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### **Housing Assistance for Native Hawaiians, Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA); Section 805(b)\*:**

- (1) In general.** Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain – ...
- (B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the “Davis-Bacon Act”...shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.
- (2) Exceptions.** Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

\* Section 805(b)(1) also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of NAHASDA-assisted affordable housing projects.

## CDBG: Factors of Labor Standards Applicability

### 1. ...construction work financed...

CDBG can finance activities other than “construction work” which do not trigger Davis-Bacon requirements; e.g., *real property acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), and other non-construction items (furniture, business licenses, real estate taxes, tenant allowances for such items).*

Also, financing is not limited to the act of paying for the construction work directly. Financing can mean, for example, using CDBG assistance to pay the interest charged or to reduce the interest rate on a construction loan (*including certain collateral accounts*). Generally, financing also means using CDBG funds to provide permanent financing (take-out loan) following construction.

### 2. ...in whole or in part...

If CDBG funds finance only a portion of a construction work, labor standards are applicable to the *entire* construction work.

### 3. All laborers and mechanics employed by contractors or subcontractors...

Labor standards provisions *do not* apply to employees of the grantee (force account workers) that may be engaged on an otherwise covered project. Note: The construction work *is covered but these force account workers are excluded.*

### 4. ...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

Typically, single-family homeowner properties are excluded under this exemption. However, *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. Examples of 8+ unit properties include:

- 5 townhouses side-by-side which consist of 2 units each.
- 3 apartment buildings each consisting of 5 units and located on one tract of land.
- 8 single-family (not homeowner) houses located on contiguous lots.

## EXHIBIT 2

## EXHIBIT 2

### HOME: Factors of Labor Standards Applicability

1. ***...affordable housing with 12 or more units assisted with funds made available under this subtitle..***

Unlike CDBG, the standard for coverage is *assisted* not *financed* – which provides for much broader application. This means that Davis-Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide downpayment assistance to individual homebuyers. [LCAs should refer to HUD’s HOME regulations (24 CFR 92.354(a)(2)) or consult with HUD Labor Relations Staff if their project involves downpayment assistance to homebuyers.]

This also recognizes that HOME projects can contain units that are *not* assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, we use the number of units identified as “HOME” units under the program definition whether determined on a pro-rata basis, specific designation or other means allowable by HUD’s Office of Community Planning and Development (CPD).

Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project other than the assisted units.

2. ***Any contract for the construction of affordable housing with 12 or more units assisted with funds...***

Davis-Bacon requirements are applicable to *contracts for construction* covering 12 or more HOME-assisted units. Davis-Bacon does not follow “construction work” or “projects”. This factor has implications in two ways:

First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (*Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.*)

Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

3. ***Sweat Equity.***

HOME provides for a sweat equity program (see NAHA Sec. 255) which permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

# PROJECT WAGE RATE SHEET

**Project Name:** \_\_\_\_\_ **Wage Decision:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_ **County:** \_\_\_\_\_

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Laborers – FB:</u> _____		
				<u>Group</u>	<u>BHR</u>	<u>Total</u>
Bricklayers	_____	_____	_____	_____	_____	_____
Carpenters	_____	_____	_____	_____	_____	_____
Cement Masons	_____	_____	_____	_____	_____	_____
Drywall Hangers	_____	_____	_____	_____	_____	_____
Electricians	_____	_____	_____	_____	_____	_____
Iron Workers	_____	_____	_____	_____	_____	_____
Painters	_____	_____	_____	_____	_____	_____
Plumbers	_____	_____	_____	_____	_____	_____
Roofers	_____	_____	_____	_____	_____	_____
Sheet Metal Workers	_____	_____	_____	_____	_____	_____
Soft Floor Layers	_____	_____	_____	_____	_____	_____
Tapers	_____	_____	_____	_____	_____	_____
Tile Setters	_____	_____	_____	_____	_____	_____
<b><u>OTHERS</u></b>				<u>Truck Drivers – FB:</u> _____		
_____				<u>Group</u>	<u>BHR</u>	<u>Total</u>
_____				_____	_____	_____
_____				_____	_____	_____
_____				_____	_____	_____

**ADDITIONAL CLASSIFICATIONS (HUD 4230-A)**

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Date HUD Approved</u>	<u>Date DOL Confirmed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

# EXHIBIT 4

## SEMI-ANNUAL ENFORCEMENT REPORT INSTRUCTIONS – AGENCY REPORT

*Please follow these instructions while compiling the Semi-Annual Labor Standards Enforcement Report for Local Contracting Agencies (HUD Programs) (SL/98-04).*

### Introduction

Department of Labor Regulations 29 CFR §5.7(b) require Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. These reports are due to the DOL on April 30 and October 31 of each year. As you know, some HUD programs are administered by local agencies for Davis-Bacon labor standards compliance. It's important to collect information from local agencies so that we include enforcement activities for all HUD programs in the Report to DOL.

The report format has been revamped as part of our overall streamlining effort. The report was expanded slightly in order to allow us to eliminate other much more frequent and cumbersome reports which were required of you, such as Start of Construction Notices and Project Compliance Reports. We instituted these changes to reduce unnecessary paperwork burdens, simplify the report, and maintain the accuracy of its content. Other improvements were made based upon your suggestions. The report is divided into two Parts: the first part concerns contracting activity and the second part concerns enforcement.

The HUD Labor Relations staff for your area will send a reminder to you about preparing the report and will inform you of the date your report is due. You are encouraged to use the HUD Report forms attached. However, you may use another format so as long as all of the information requested on the HUD Report form is provided.

### Definitions and Guidance

Report periods run on a fiscal year basis. The first report for each year covers October 1 through March 30; the second report covers April 1 through September 30.

# EXHIBIT 4

**Part I – Contracting Activity** – This part concerns only contracts that were *awarded* during this period. *Do not* include contracts that were awarded prior to this period even though the contract may still be underway.

1. Enter total number of prime contracts subject to DBRA/CWHSSA awarded during this period. Track contracts by award date or start of construction – do not track by bid opening date. Housing Authorities and IHBG recipients: Include force account work that is subject to DBRA.
2. Enter the total dollar amount of the contracts and/or PHA/IHA/IHBG force account work reported in #1.
3. List individual project/contract names, numbers, amounts, the wage decision and modification numbers in the contract and the wage decision effective date (bid opening date, contract award date or start of construction, as appropriate) relating to Items 1 & 2.

**Part II – Enforcement Activity** – This part concerns all enforcement activity no matter when the contract was awarded or construction began.

4. Enter the number of employers (contractors, subcontractors, lower-tier subcontractors) against whom complaints were received during the report period. List the names of the employers against whom complaints were received and the projects involved.
5. Enter the number of employers which were referred to HUD Labor Relations or DOL staff for compliance investigations, or for §5.11 and/or debarment hearing. List the employer, project, and agency to which the case was referred, and the reason for referral – investigation, §5.11 and/or debarment (§5.12) hearing.
6. Enter information relative to wage restitution that was collected and/or disbursed. This includes restitution disbursed by the agency; restitution reported on certified payroll correction reports, amounts collected but not disbursed because workers could not be found. Also list liquidated damages collected for Contract Work Hours and Safety Standards Act (CWHSSA) overtime violations.

# EXHIBIT 4

## SEMI-ANNUAL LABOR STANDARDS ENFORCEMENT REPORT

Agency Name: \_\_\_\_\_

Local Contracting Agencies (HUD Programs)

Period Covered: From \_\_\_\_\_ to \_\_\_\_\_

### PART I – CONTRACTING ACTIVITY\*

1. Number of prime contracts subject to the Davis-Bacon and Related Acts (DBRA) and/or the Contract Work Hours and Safety Standards Act (CWHSSA) awarded this period:

(1) \_\_\_\_\_

2. Total dollar amount of prime contracts reported in Item 2 above:

(2) \_\_\_\_\_

3. List Contract/Project, Amounts, Wage Decision and Effective date (Items 1 & 2):

<u>Project Name/Number</u>	<u>Contract Amount</u>	<u>Wage Decision &amp; Modifications</u>	<u>Wage Decision Effective Date</u>
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\*Use additional pages if necessary.

SL/98-04(1) (6/01)

**SEMI-ANNUAL LABOR STANDARDS ENFORCEMENT REPORT**

Agency Name: \_\_\_\_\_ Local Contracting Agencies (HUD Programs)

Period Covered: From \_\_\_\_\_ to \_\_\_\_\_

**PART II – ENFORCEMENT ACTIVITY\***

4. Number of employers against whom complaints were received (list employers and projects involved below):

(4) \_\_\_\_\_

Employer

Project(s)

5. Number of cases (employers) referred to (a) HUD Labor Relations Staff or (b) Department of Labor (DOL) for investigation or §5.11 hearing (list referrals below):

(5)(a) HUD \_\_\_\_\_

(5)(b) DOL \_\_\_\_\_

Employer

Project

HUD or DOL

Invest. or Hearing

6. Wage restitution: (a) Number of workers for whom wage restitution was collected/disbursed; (b) Total amount of Davis-Bacon wage restitution; (c) Total amount of CWHSSA overtime restitution; and (d) Total amount of liquidated damages collected for CWHSSA overtime violations. Include wage restitution disbursed by the agency, amounts reported on correction certified payrolls, amounts collected but not disbursed because the worker(s) could not be found, etc.

(6)(a) Number \_\_\_\_\_

(6)(b) Davis-Bacon Restitution Amount \_\_\_\_\_

(6)(c) CWHSSA Restitution Amount \_\_\_\_\_

(6)(d) Liquidated Damages Collected \_\_\_\_\_

\*Use additional pages if necessary.

## EXHIBIT 5

### Payroll Falsification Indicators

Certified payroll reports are fairly straightforward records of employees, work classification, hours worked, rate(s) of pay, gross earnings, deductions and net wages paid. The information required for certified payrolls involves no more than the information any responsible employer must maintain concerning its basic business operations.

Davis-Bacon compliance basically involves three factors: 1. The type (classification) of work performed; 2. The number of hours worked; and 3. The prevailing wage rate for that classification. A fourth factor involves the actual payment of wages by check and/or cash. In order to conceal underpayments, a willfully violating employer must falsify the payroll report as it pertains to one or more of these factors. There are four falsification indicators that are easy to detect on certified payrolls in a “spot-check”:

- 1. Ratio of laborers to mechanics.** Look for excessive use of laborers over mechanics. Generally there should be no more than one laborer for each mechanic (1:1) except for landscaping, or cement or other paving work.  
**Indicative of: Misclassification.** Workers are performing higher-paying mechanic duties but are misclassified and paid at lower Laborer wage rates.
- 2. Too few or irregular hours.** Look for employees that never work 40 hours per week; for crews that work in a scattered fashion; for hours reported in tenths or hundredths (e.g., 13.6 hours). Most people work a 40-hour workweek. Most crews work together on a job site. Most employers and employees track work hours by whole, half and quarter hours not by tenths or hundredths.  
**Indicative of: Reduction of Hours.** Actual hours worked are reduced to “fit” in a fabricated calculation: (Reduced hours) x (Rate required on wage decision) = Substandard wages actually paid based upon a lower rate of pay.
- 3. Discrepancies in wage computations.** Look for gross wages paid in “round” numbers (e.g., \$700) that don’t agree with the product of reported hours multiplied by the rate of pay. For example, a payroll showing 20 hours times \$33.68 (the rate on the wage decision) and gross wages of \$700. (20 hours times \$33.68 equals \$676.60 *not* \$700.)  
**Indicative of: Falsification of rate of pay such as piece work or lower (but more even) rate.** For example, the wage decision requires \$33.68/hour for the type of work performed but the employer chooses to pay \$17.50 per hour. (40 hours times \$17.50 equals \$700.) The employer can’t make the fabricated calculation “fit” precisely because the Davis-Bacon wage rate is not an even figure.
- 4. Extraordinary deductions.** Look for unidentified or disproportionate deductions, for example, an employee whose savings account deduction is nearly as much or more than the weekly take-home pay.  
**Indicative of: Kickbacks or basic underpayment.** The employer takes his “cut” from the back end of the computation (after gross earnings) rather than the front end (falsifying the classification, hours or wage rate).

If these indicators appear on payrolls you will want to take preliminary steps to test whether the payrolls are accurate or false. For example, you can target on-site interviews or send questionnaires to the affected workers to get their perspective and compare the interview and/or questionnaire statements to the payroll reports. If an investigation is warranted, you will want to learn what information on the payrolls is false and what is true. (Employers rarely falsify *all* of the information on payrolls.) Eventually, you will need to compute the amounts of backwages that are due and knowing what information on the payroll is true can be critical to making these computations.

U.S. Department of Housing and Urban Development

Office of Labor Relations

Washington, DC 20410

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## Labor Relations Desk Guide



## **Davis-Bacon Bid Language**

This project is funded through federal Community Development Block Grant funds. All work completed on the project will be performed in compliance with the Davis-Bacon Act and Federal Labor Standards Provisions (HUD Form 4010). All workers employed on this project shall receive the minimum prevailing Davis-Bacon wage requirements as specified in:

**General Decision Number:**

**Modification #:**

**Dated:**

or latest version. Wage requirements may change prior to start of work; current wage rates are in effect at the time of the bid opening. Wages will be effective 90 days after bid opening. If construction contract is not signed within the 90 day period, the most current wage rates will be in effect at that time.

## **DAVIS BACON PROCEDURES**

### **BEFORE CONTRACT WITH SUBGRANTEE IS PREPARED:**

1. Inform subgrantee of Davis-Bacon impacts to their project.
2. Meet with subgrantee to discuss project; try to design project to reduce impacts of Davis-Bacon.
3. Give subgrantee most current D-B wage determination stamped "SAMPLE" for the appropriate type of project (residential, building, highway) to assist them in putting together their budget exhibit. Ask if they have consulted with either an architect, engineer, or contractor about the costs. If yes, get copy of the cost analysis.
4. Complete Environmental Review of property.
5. Obtain Exhibits 1-3 and Performance Plan from subgrantee.
6. Prepare contract between County and subgrantee and obtain signatures.

### **MEET WITH SUBGRANTEE:**

1. Review bid process and bid package. Determine dates of bid availability, any walk-throughs, and bid opening. (These dates may be tentative at this point).
2. Discuss construction contract requirements. Explain that contract between subgrantee and contractor must be signed within 10 days of bid award to ensure that current wage determination is in force. If not, a new wage determination may have been issued and would supersede the wage determination used for the bid.
3. Determine if subgrantee is going to use their own form contract or would they like to use the County's form contract. Make copy available for their review.
4. Review what a Pre-Construction Conference is all about.

### **WAGE DETERMINATION:**

1. Send current Wage Determination and Federal Labor Standards Provisions to subgrantee three weeks before subgrantee will advertise bid availability, to be included in bid package.

### **BEFORE BID OPENING:**

1. Verify that wage determination is the most current. If not, subgrantee must inform all bidders of new wage rate to allow bidders an opportunity to adjust their bids. Put note in subgrantee's file of any actions regarding this requirement.

### **AFTER BID OPENING:**

1. Have subgrantee call you with name of contractor who has been awarded bid. Check debarment list to assure bid-winning contractor is not on list. (Internet debarment address is <http://www.arnet.gov/epl>). Print debarment info and place in file. Advise subgrantee immediately.
2. Determine if contractor is going to use subcontractor(s). If so, get name of subcontractor(s) and check debarment list. Print debarment info and place in file. Advise subgrantee immediately.

### **PRE-CONSTRUCTION CONFERENCE:**

#### **Preparation:**

1. Prepare agenda.
2. Prepare sign-in sheet.
3. Prepare handouts.

#### **Conference:**

1. Follow agenda.
2. Obtain copies of all pertinent documents for OCD file.

#### **Follow-up:**

1. Mail Priority Notice to (HUD/Labor Relations).
2. Complete D-B To Do List and Construction Contract Checklist.

**AT START OF CONSTRUCTION:**

1. Get copy of Notice to Proceed from Subgrantee.
2. Get Section 3 Form, Part 1 from Contractor / Subcontractor(s)
3. If necessary at start or during construction, get Apprenticeship Form and/or Additional Wage Classification.

**DURING CONSTRUCTION:**

1. Conduct employee interviews.
2. Inspect job site for work being done and required posting of documents:
  - Wage Determination
  - Davis-Bacon Poster
  - Equal Employment Poster
3. Review Weekly Payroll and Statement of Compliance forms.

**WITH FIRST PAYROLL:**

1. Get Contractor Appointment of Payroll Supervisor form, if applicable.

**AT COMPLETION OF JOB:**

1. Get Section 3 Form, Parts II, III, & IV from Contractor / Subcontractor(s)
2. Complete Priority Notice showing Final Statement of Wage Compliance. Mail to HUD.
3. Monitor subgrantee for compliance with D-B and with all other CDBG or HOME requirements.

## ADAMS COUNTY COMMUNITY DEVELOPMENT

### Davis-Bacon Paperwork Requirements

- 1) **Contractor / Subcontractor Ownership Form** - Complete and Submit at preconstruction conference.
- 2) **Section 3: Lower Income and Minority Hiring**
  - **Part I**  
Complete and Submit at preconstruction conference
  - **Parts II, III, IV**  
Complete at project completion; return to Adams County Community Development.
- 3) **Contractor Appointment of Officer to Supervise Payment** - Submit to Adams County Community Development with first payroll sheet.
- 4) **Payroll and Statement of Compliance** - Complete weekly and submit to Adams County Community Development within seven (07) days. Number your payroll sheets consecutively (1, 2, 3, 4, etc.). Complete in **BLUE** or **BLACK INK**; do not use a pencil. Do not use whiteout on any errors; place one line through the error and rewrite the correct figure. If you prepare computerized payroll sheets, those are appropriate to submit.
- 5) **Report of Additional Classification and Wage Rate** - Submit to Adams County Community Development, as appropriate.
- 6) **Apprentices/Trainees** - Submit to Adams County with the first payroll on which an apprentice appears:
  - Copy of apprenticeship registration in an official Department of Labor Apprenticeship Program; and
  - Copy of the approved program pertaining to the wage rates and ratios.
- 7) **Contractor Eligibility Verification Form**
- 8) **Section 8-17.5-102 C.R.S**

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Please address any questions about Davis-Bacon and your project to:  
**ADAMS COUNTY COMMUNITY DEVELOPMENT - DEVELOPMENT GRANTS MANAGER**  
4430 S. Adams County Parkway, Suite C1900  
Brighton, Colorado 80601  
Ra'Chel'Ni Mar'Na  
720.523.6208  
[rmar'na@adcogov.org](mailto:rmar'na@adcogov.org)

For Davis-Bacon Compliance questions, please contact:  
**ADAMS COUNTY COMMUNITY DEVELOPMENT - COMPLIANCE OFFICER**  
Kate Smith  
720.523.6061  
[kmsmith@adcogov.org](mailto:kmsmith@adcogov.org)

**Adams County Community Development  
DAVIS-BACON PROJECT TIMELINE**

ACTIVITY	WHAT TO DO
<b>1. Agreement Execution</b>	Agreement between Adams County and your agency must be signed <b>BEFORE any</b> bid preparation begins.
<b>2. Bid Packet Preparation</b>	If you have not yet received, please request the following documents/information regarding bid packet compliance from Adams County Community Development: <ul style="list-style-type: none"> <li>– <b>Davis-Bacon bid language (sample attached)</b></li> <li>– <b>Fair Labor Standards Provisions (sample attached)</b></li> <li>– <b>Current Wage Rate (sample attached or go to <a href="http://www.access.gpo.gov/davisbacon/co.html">http://www.access.gpo.gov/davisbacon/co.html</a>)</b></li> </ul>
<b>3. Bid Packet Completion</b>	Send a copy of your bid packet to Adams County Community Development for review and approval <b>PRIOR TO ISSUING YOUR BID.</b> (If this isn't done, you will <b>BE REQUIRED TO RE-SOLICIT YOUR PROJECT/BID.</b> )
<b>4. Contractor/Subcontractor Selection</b>	Submit the following information <b>PRIOR</b> to awarding the project: <ul style="list-style-type: none"> <li>– Names &amp; Business Addresses of all: <ul style="list-style-type: none"> <li>– <b>General Contractor working on this project</b></li> <li>– <b>Sub-Contractors working on this project</b></li> </ul> </li> </ul> Adams County Community Development <b>MUST</b> conduct an Excluded Parties List System clearance <b>PRIOR</b> to <b>any</b> project contracts/agreements to verify that none are debarred from working on Federal programs.
<b>5. Contract Award</b>	Notify Adams County Community Development of contract <b>award date AND amount</b> so the wage determination can be finalized.
<b>6. Pre-Construction Meeting</b>	Coordinate your pre-construction meeting date with Adams County Community Development. The following people should be present for the pre-con meeting: <ul style="list-style-type: none"> <li>– <b>Project Manager/Project Oversight from your agency</b></li> <li>– <b>General Contractor and their Payroll Supervisor</b></li> <li>– <b>All Subcontractors and their Payroll Supervisors</b></li> <li>– <b>Adams County Community Development staff</b></li> </ul>
<b>7. Construction Commencement</b>	All Davis-Bacon paperwork is facilitated directly between the Contractor/Subcontractor(s) and Adams County Community Development. If problems arise, you will be notified and asked to withhold payment to the Contractor/Subcontractor until corrections are submitted and approved by ACCD. <b>FUNDS CANNOT BE RELEASED UNTIL ALL RELATED PAPERWORK IS SUBMITTED CORRECTLY AND/OR ALL COMPLIANCE AREAS ARE MET SATISFACTORILY.</b>

Please address any questions about Davis-Bacon and your project to:  
**ADAMS COUNTY COMMUNITY DEVELOPMENT - DEVELOPMENT GRANTS MANAGER**  
4430 S. Adams County Parkway, Suite C1900  
Brighton, Colorado 80601  
Ra'Chel'Ni Mar'Na  
720.523.6208  
[rmar'na@adcogov.org](mailto:rmar'na@adcogov.org)

For Davis-Bacon Compliance questions, please contact:  
**ADAMS COUNTY COMMUNITY DEVELOPMENT - COMPLIANCE OFFICER**  
Kate Smith  
720.523.6061  
[kmsmith@adcogov.org](mailto:kmsmith@adcogov.org)