

CHAPTER 2 LABOR STANDARDS ADMINISTRATION:
PRECONSTRUCTION PHASE

- 2-1 LABOR STANDARDS REQUIREMENTS - PRECONSTRUCTION PHASE. A construction project covered by Federal labor standards requires a series of specific actions by contract administrators or labor standards personnel prior to the actual start of construction. Those actions are:
- a. obtaining an applicable wage determination for the project;
 - b. including that wage determination (and any modifications) in the bid documents (where there is competitive bidding);
 - c. including appropriate labor standards provisions and the wage determination in the construction contract;
 - d. holding a preconstruction conference to explain labor standards;
 - e. checking the prime contractor for eligibility status;
 - f. adding any job classifications needed but not listed in the wage determination.

SECTION 1. WAGE DETERMINATIONS

- 2-2 CONSTRUCTION WAGE DETERMINATION - DEFINITION. All construction bid documents and contracts or analogous instruments covered by Federal labor standards must contain a current and applicable wage determination issued by the Department of Labor. The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision.
- 2-3 OBTAINING WAGE DETERMINATIONS - PROJECT DETERMINATIONS. Project wage determinations are obtained through the submission of Standard Form SF-308 to the Department of Labor (DOL) at this address:

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determination
Washington, D.C. 20210

Local or State agencies will prepare an SF-308 (See Exhibit 3) and submit it to the appropriate HUD Field Office Labor Relations Staff. The latter will review the form for accuracy

and completeness and mail it to Department of Labor. A full description of the work to be performed must be provided on the SF-308. Only those classifications needed for the work

should be checked. The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. At least 30 working days shall be anticipated for the processing. HUD encourages the voluntary submission by local or State agencies of any wage rate data which may be of use to the Department of Labor in the wage determination process. Where States are administering the CDBG program, States will send the SF-308 directly to the Department of Labor. The HUD Field Office Labor Relations Staff will coordinate and direct these wage collection efforts.

2-4 OBTAINING GENERAL WAGE DETERMINATIONS. Where wage patterns in a particular type of construction are settled and whenever a large volume of procurement in that area for such a type of construction may occur, the Department of Labor may issue a general wage determination, notice of which is published in the Department of Labor publication "General Wage Determinations issued under the Davis-Bacon and Related Acts." Such decisions may be used without notifying the Department of Labor. Department of Labor general wage determinations will be provided to Public Housing Agencies, Indian Housing Authorities, Local and State Housing and Community Development Agencies and Coinsuring Lenders by HUD upon the submission of an SF-308 to the HUD Field Office Labor Relations Staff. Copies of all SF-308s and resultant wage determinations will be maintained by the HUD Field Office Labor Relations Staff in appropriate project files. States administering the CDBG program may use the published General Wage Determination without dealing with the HUD Field Office Labor Relations Staffs.

2-5 USE AND EFFECTIVENESS OF WAGE DETERMINATIONS AND EXTENSION OF EXPIRATION DATES:

- a. Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If an effective wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an Agreement to Enter into a Housing

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Assistance Payments Contract under Section 8 of the U. S. Housing Act of 1937, and the start of construction) HUD or the local or State agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of

construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an Agreement to Enter into a Housing Assistance Payments Contract under Section 8 of the U. S. Housing Act of 1937), HUD may request DOL to extend the expiration date of the wage determination instead of issuing a new wage determination. Such a request shall be supported by a written finding, which shall include a brief statement that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Department Of Labor will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Department of Labor will proceed to issue a new wage determination which will be applicable to the project.

- b. General wage determinations, notices of which are published in the Department of Labor Publication "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," contain no expiration date. General wage determinations may be modified to keep them current.
- c. Project wage determinations may be modified to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedes wage determination, which replaces the entire wage determination. All actions modifying a project wage determination received by Public Housing Agencies, Indian Housing Authorities, Local and State Housing and Community Development Agencies and Coinsuring Lenders before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

- (1) For contracts entered into pursuant to competitive bidding procedures, modifications received by the local or State agency less than ten days before the opening of bids shall be effective unless the local or State agency finds that there is not a reasonable time available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. No such report shall be required if the modification is received after bid opening.
- (2) For projects insured or coinsured under the National

Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first. If construction starts (with HUD approval) prior to initial endorsement for insurance, modifications to project wage determinations shall not be effective if issued after construction starts. Initial endorsement or start of construction, whichever occurs first, will serve to "lock in" the wage determination.

- (3) For projects receiving housing assistance payments under Section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the Agreement to Enter into a Housing Assistance Payments Contract is executed, whichever occurs first.

d. All actions modifying a general wage determination shall be effective for any project to which the determination applies, if notice of such action is published before contract award (or the start of construction where there is no contract award), except as follows:

- (1) In the case of contracts entered into pursuant to competitive bidding procedures, modifications, notice of which is published less than ten days before the opening of bids shall be effective unless HUD finds that there is not a reasonable time available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Department of Labor upon request. No such report shall be

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required if the modification is published after bid opening.

- (2) For projects insured or coinsured under the National Housing Act, modifications shall be effective if notice of such modification is published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.
- (3) For projects to receive housing assistance payments under Section 8 of the Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the

Agreement to Enter into a Housing Assistance Payments Contract is executed, whichever occurs first.

A modification to a general wage determination is "published" within the meaning of this section on the date of modification in the Department of Labor Publication "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," or on the date the agency receives actual written notice of modification from the Department of Labor, whichever occurs first. The Labor Relations Staff is responsible for advising program participants promptly of modifications published in the Department of Labor Publication "General Wage Determinations Issued Under The Davis-Bacon and Related Acts."

- e. If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is approved prior to contract award (or the beginning of construction where there is no contract award), HUD shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under Section 8 of the U. S. Housing Act of 1937, or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactive to that date, provided, that upon the request of the head of the agency in individual cases the Department of Labor may issue such a wage determination to be effective on the date of

approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship.

- f. If the contract has not been awarded within 90 days after bid opening, or if construction has not begun within 90 days after initial endorsement or the signing of the Agreement to Enter into a Housing Assistance Payments Contract, any modifications, notice of which is published in the Department of Labor Publication "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such

request shall be supported by a written finding, which shall include a brief statement of the factual support that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. Extension requests shall be submitted by the HUD Field Office Labor Relations Staff to Headquarters Labor Relations for transmittal to the Department of Labor. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

2-6 ADDITIONAL CLASSIFICATIONS. If a wage determination does not contain some of the classifications needed for the construction project, the HUD Field Office Labor Relations Staff should be notified in writing. Upon request, the HUD Field Office Labor Relations Staff will designate the appropriate classification to use for the work in question. If there is not a suitable classification on the existing wage determination to be so designated for the work in question, then additional classifications will be conformed to the wage determination. The Public Housing Agencies, Indian Housing Authorities, Local and State Housing and Community Development Agencies and Coinsuring Lenders contract administrator or labor standards designee shall make the request to the appropriate HUD Field Office Labor Relations Staff which will, after consideration of all wage data and supporting evidence available, conform a classification and rate. The State CDBG agency similarly will conform a classification and rate in that program upon receiving a request from a recipient. A

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report of the conformance action taken shall be sent by the HUD Field Office Labor Relations Staff or the State CDBG agency to the Department of Labor (OMB 2501-0001) (Exhibit 9). The Department of Labor reserves final judgment for such decisions and will advise HUD (or the State) as to the acceptability of such reports within 30 working days. The following guidelines shall be used in approving additional classifications and rates and in preparing the report for the Department of Labor:

- o The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- o The classification is utilized in the area by the construction industry; and
- o The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to

the wage rates contained in the wage determination.

2-7 INCLUSION OF WAGE DETERMINATIONS AND LABOR STANDARDS PROVISIONS
IN CONTRACTS AND SUBCONTRACTS AND IN BID PROVISIONS.

The applicable wage determination including modifications must be made part of the bid documents (if any), or invitation for bids. Every ensuing construction contract and subcontract for construction work covered by Federal labor standards must include this applicable wage determination and its modification (if any). The wage rates contained therein shall be the minimum wage rates to be paid under such contracts by contractors and subcontractors on the job. The Federal Labor Standards Provisions must also be included in all contracts, subcontracts, and any lower-tier subcontracts and in the bid documents. Inclusion by reference is unacceptable. It is the prime contractor's responsibility to ensure inclusion of wage rates and labor standards provisions in all subcontracts. HUD contract forms which contain the appropriate labor standards provisions for the different programs are cited in Exhibit 1.

- a. Failure to Include Wage Determinations. The failure to include the required wage determination and appropriate labor standards provisions in bid documents or contracts will not relieve local or state agencies or contractors from potential liabilities for enforcement actions. Any failure to include a wage determination must be rectified. The Department of Labor may issue a wage

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determination after contract award or after the beginning of construction if the agency has failed to include a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms clearly does not apply to the contract.

- b. Use of Wrong Determination. The Department of Labor may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction if the wrong wage determination has been included in the contract because the agency has inaccurately described the project or its location in its request for a wage determination. The agency shall either terminate and resolicit the contract with the valid wage determination, or shall make the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order and shall compensate the contractor for any increases in wages resulting from such change. The method used in implementing the valid wage determination and adjustment in contract price, where appropriate,

should be in accordance with applicable contract law. Where an error (clerical) was made in a published area or issued project wage determination, the Department of Labor will issue a letter of inadvertence. Corrections shall be included in any bid documents or in any on-going contract retroactively to the start of construction.

- 2-8 POSTING OF WAGE DETERMINATION. A copy of the applicable wage decision and any additional classifications shall be posted by the contractor at the site of work in a prominent place readily accessible to the workers. Publication WH-1321 Notice to Employees (See Exhibit 4) will also be posted with the name and telephone number of the local or State agency compliance designee or HUD Field Office Labor Relations Staff, whichever is appropriate.

SECTION 2 OTHER REQUIREMENTS

- 2-9 VERIFICATION OF CONTRACTOR ELIGIBILITY AND TERMINATION OF INELIGIBLE CONTRACTORS.

By the insertion of certification of eligibility clauses in all contracts and subcontracts, the prime contractor and all

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subcontractors state that they are eligible for award of a contract in connection with Federal assistance or mortgage insurance. The Public Housing Agencies, Indian Housing Authorities, Local and State Housing and Community Development Agencies and Coinsuring Lenders shall verify that all prime contractors are eligible prior to contract award by reviewing the current HUD List of Debarred, Suspended, or Ineligible Participants, and the General Services Administration's Consolidated List of Debarred, Suspended, and Ineligible Contractors. These lists will be supplied by HUD and kept current. HUD Field Office Labor Relations Staff will similarly verify prime contractor eligibility for contracts being directly administered by HUD. In both cases, prime contractors shall be informed in preconstruction conferences that it is their responsibility to employ only eligible subcontractors who have certified eligibility in written contracts containing Federal Labor Standards Provisions.

- 2-10 USE OF APPRENTICES AND TRAINEES. The following requirements are excerpted from 29 CFR Section 5.5 for emphasis.
- a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S.

Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau or if a person is employed in his/her first 90 days of probationary employment as an apprentice, who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

- (1) The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his/her entire work force under the registered program.

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- (2) Any worker listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed is stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed.
 - (3) The contractor or subcontractor may be required to furnish to the labor standards compliance person or a representative of the Wage-Hour Division of the U. S. Department of Labor written evidence of the registration of his/her program.
 - (4) The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeymen's rate contained in the applicable wage determination.
- b. Trainees. Except as provided in 29 CFR Section 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.
- (1) The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Employment and Training Administration.
 - (2) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress.

- (3) The contractor or subcontractor may be required to furnish the labor standards compliance person or a representative of the Wage-Hour Division of the U. S. Department of Labor written evidence of the certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program.
- (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted

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to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2-11 PRECONSTRUCTION CONFERENCE. The Public Housing Agencies, Indian Housing Authority, Local or State Housing and Community development Agency, or Coinsuring Lender or HUD, whichever is directly administering the construction contract, shall hold a conference with the principal contractor and all available subcontractors prior to the start of construction at which time all shall be advised of their responsibilities and obligations regarding the labor standards provisions and the wage determination contained in the contract documents. This includes the requirement that payrolls list all workers on a project and that prime contractors are responsible for the payment of employees of subcontractors and lower tier subcontractors in compliance with labor standards provisions. Pertinent data as to the items discussed and attendees shall be documented. A report or copy of the minutes shall be prepared and retained in the agency's files on each preconstruction conference. The report or minutes will contain:

- a. Project name, location and description, wage determination number
- b. Name of contractor
- c. Contract amount
- d. Date and place of conference
- e. Conference attendees
- f. Summary of items covered

A guide entitled "Conducting Preconstruction Conferences" has been made available to all HUD Field Offices. These guides are designed particularly to assist local and State agencies in explaining labor standards to contractors in preconstruction conferences.

2-12 WEEKLY PAYROLLS. Each contractor and subcontractor and any lower-tier subcontractor shall submit (through the prime

contractor) to the local or State agency or HUD, whichever is directly administering the construction contract, weekly payrolls (See Exhibit 5) for each work week from the time work is started on the project until it is completed. If no work is performed on the project during a given work week, weekly payrolls need not be submitted. Weekly payrolls shall be numbered sequentially and the final payrolls marked "Final."

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Weekly payrolls shall be completed and submitted promptly, preferably no later than seven work days following completion of the work week.

2-13 CONTRACTOR'S PREVAILING WAGE CERTIFICATE - HUD INSURED HOUSING PROGRAMS. As a condition precedent to insurance by the Federal Housing Administration of an advance or draw, contractors must submit HUD Form 92448, Contractor's Requisition Project Mortgages.

2-14 LABOR STANDARDS ENFORCEMENT FILE AND NOTIFICATION TO HUD. A "labor standards enforcement file" shall be established prior to construction for each construction project undertaken by a Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender, or HUD, whichever is directly administering the construction contract, subject to the applicable labor standards provisions. Such file(s) are to be maintained by the appropriate staff designated by the Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender, or HUD in accordance with paragraph 1-6. The applicable wage determination, including effective modifications and additions, copies of correspondence, preconstruction conference report, memoranda, weekly payrolls, and forms relating to the administration and enforcement of labor standards provisions shall be kept in such files. Notice of "start of construction" for any covered project and contract award date shall be sent by the Public Housing Agency, Indian Housing Authority and Local or State Housing and Community Development Agency (except the CDBG-State administered program) to the appropriate HUD Field Office Labor Relations Staff and shall include information as to project name and location and the number of the applicable wage decision.

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