CHAPTER 7
DAVIS-BACON LABOR STANDARDS

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CHAPTER 7
DAVIS-BACON LABOR STANDARDS

7.0 Introduction

This chapter offers a brief description of the laws and regulations associated with federal labor standards administration and enforcement, including TxCDBG contract requirements for Davis-Bacon compliance and responsibilities of the Grant Recipient.

This chapter refers to HUD's policy guide titled *Federal Labor Standards Requirements in Housing and Urban Development Programs*, but more commonly referred to as HUD Handbook 1344.1 Rev 3. The Handbook in its entirety and other technical information about federal labor standards requirements can be found on HUD's website.

Title I of the Housing and Community Development Act of 1974 requires the payment of Davis-Bacon Act prevailing wage rates, which are determined by the U.S. Department of Labor, to all workers on TxCDBG construction projects in excess of $2,000.[1] For assistance in determining whether Davis-Bacon wage rates apply to a particular project, please see the *Davis-Bacon Coverage Chart* **(Form A711)** or contact TDA. **These requirements apply regardless of whether or not the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process.**

Even if TxCDBG funds finance only a portion of a construction contract, Davis-Bacon requirements still apply to the **entire** construction contract.

EXAMPLE: If a construction contract includes $1.00 of work funded through TxCDBG grant funds, and $100,000 in similar work funded through local funds and not included in the grant description, Davis-Bacon requirements apply to the entire $100,001 contract.

Activities financed by TxCDBG that are not construction work do not trigger Davis-Bacon requirements.

EXAMPLE:

- Real property acquisition;
- Architectural and engineering fees;
- Other professional services, such as legal, accounting, testing (see below **NOTE**); and
- Other non-construction items, such as furniture, business licenses, real estate taxes.

NOTE: Drilling a test well can be considered either a component of construction or a professional service. To determine if Davis-Bacon applies to a test well, please refer to DOL Field Operations handbook, 15d05, for additional guidance and contact TDA staff.

7.1 Objectives of Davis-Bacon

The following five key labor standard objectives must be accomplished by the Grant Recipient and/or TDA in order to administer and enforce Davis-Bacon requirements and protect workers' rights.
Objectives for Davis-Bacon Labor Standards Compliance:

- Apply Davis-Bacon requirements properly;

[1] 42 USC § 5310; 40 USC 3142(d))

- Support Grant Recipient compliance with labor standards through education and technical assistance;
- Monitor Grant Recipient performance;
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators.

By executing the TxCDBG grant agreement, Grant Recipients have agreed to administer and enforce Davis-Bacon requirements and have accepted the responsibilities described in this chapter.

7.2 Procedures for Labor Standards Compliance

A construction project covered by Federal labor standards requires a series of specific actions by labor standards personnel prior to the actual start of construction.

Step 1. Designate a Labor Standards Officer for the Project
Identify the Labor Standards Officer (LSO) on the TDA-GO *Grant Overview* page. The LSO must have an account within the TDA-GO system and must be designated by the Authorized Official (AO) for the Grant Recipient as responsible for compliance with Davis-Bacon and related requirements.

The LSO is responsible for the proper administration and enforcement of the federal labor standards provisions on contracts covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction advice and support to the Grant Recipient and other project principals (for example the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a contractor that is ineligible (i.e., debarred) for federally-assisted work;
- Providing the proper Davis-Bacon wage decision and ensuring that the wage decision and contract clauses are incorporated into the contract for construction and any sub-contracts;
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing payroll reports, and ensuring that the applicable Davis-Bacon wage decision and the Department of Labor's Notice to All Employees are posted at the job site; and
- Overseeing any enforcement actions that may be required.

The LSO may be an employee of a city or county or of a private consulting firm. An LSO is required for all grant contracts with construction activities, including those with force account approval.

The individual designated as LSO may change during the grant period; in this case the Grant Recipient must appoint a new LSO and update the TDA-GO *Grant Overview* page no later than 30 days after the change.

Step 2. Obtain an Applicable Wage Decision for the Project
Wage decisions:

- Are established by the U.S. Department of Labor (DOL);
- List construction work 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;
- Are categorized into four groups: heavy, highway, building, and residential construction;
- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified from time to time to keep them current.

The LSO must obtain the applicable wage decision from the Department of Labor's website at https://beta.sam.gov for all construction contracts where Davis-Bacon and Related Acts (DBRA) that are greater than $2,000. Review the various wage decisions for each county and choose the one that is appropriate for the work to be done. The types of work and the locations where these decisions are applicable are listed in the first paragraphs of the decision.

Wage Rate Classifications
The following descriptions and illustrations are provided as guidelines. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply.

- **Highway Construction** – Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to building or heavy construction.
- **Building Construction** – Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures greater than four stories, the installation of utilities, and the installation of equipment, both above and below grade level, as well as incidental grading, utilities, and paving. Additionally, such structures need not be **habitable** to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.
- **Residential Construction** – Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
- **Heavy Construction** – Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Step 3. **Complete the Material and Services Report Labor Standards page**
Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

The LSO must document the wage decision on the *Labor Standards* page of a Materials and Services Report (MSR) in the TDA-GO system. TDA staff will review the project description entered on the MSR Main page and verify that the wage decision is appropriate. Approval of the wage decision must be received prior to the bid opening date.

Step 4. Include the Wage Decision in the Bid Documents
If the construction work will be procured through competitive bidding (either sealed bids or small purchase procurement), the wage decision (and any modifications) must be included in the bid package. See *Chapter 5 Procurement Procedures* for more information on the bid process and documents.

Step 5. Ensure that the Wage Decision is Current Before Bid Opening
The LSO must confirm that the wage decision in the bid specifications for construction contracts in excess of $2,000 is still current for the bid opening date. <u>No more than ten, but not less than five, days prior to the bid opening, the LSO must confirm that the previously identified wage decision is still applicable.</u>

- Save a copy of the wage decision with the current print date for the local file; and
- Provide the date as the 10 Day Verification field in the *Pre-Selection Clearance* section of the MSR Main page in TDA-GO.
- If the construction contract is selected through small purchase or approved non-competitive procedures, then the **Confirmed Bid Opening Date** on the MSR page is the due date for Requests for Quotes on the work to be done.

BEST PRACTICE: Once the project description is known, create the MSR for construction and input the project description and wage decision number. This will allow the Labor Specialist to review and confirm or recommend a more appropriate wage decision in a timely manner.

Wage rates may be modified until bids are open. The Ten Day Confirmation does **not** lock in wage rates; however, TDA considers five or more days prior to bid opening to be a reasonable amount of time to notify prospective bidders of any changes to the wage decision.[2]

If the wage decision is modified prior to bid opening, and:

- **Confirmed six to ten days prior to bid opening** – Incorporate the revised wage decision into the bid documents as an addendum and notify all potential bidders.
- **Confirmed zero to four days prior to bid opening** – Cancel the bid opening - incorporate the revised wage decision into the bid documents and set a new bid opening date that allows sufficient time for all required bid notices.
- **Discovered after bid opening** – Notify TDA staff immediately. In addition to a corrective action plan, consequences for the Grant Recipient may range from instructions to reject all bids to disallowed costs. The construction contractor is responsible for meeting the requirements of the modified wage decision and any compensation demanded by the contractor in order to meet these requirements are not eligible costs for grant or match funding.
- **For small purchase and approved non-competitive procurement procedures** – If less than five days are allotted to obtain quotes, the Grant Recipient must at a minimum confirm the wage decision prior to the due date for the quotes.
- **The Grant Recipient or TDA is notified of changes to a properly confirmed wage rate prior to the bid opening** – Notify TDA immediately. TDA staff will determine whether there is sufficient time to notify bidders of the change, and, therefore, whether the original or modified wage decision must be included in the bid and contract documents.

If the Grant Recipient does not formally award the construction contract within 90 days of the bid opening, the wage decision is no longer “locked in” and must be confirmed once again. If the original decision has been modified, the construction contractor is responsible for meeting the requirements of the modified wage decision.

Step 6. **Award the Construction Contract**

Each contract subject to Davis-Bacon labor standards requirements must include contract provisions containing labor standards clauses and a Davis-Bacon wage decision. A sample construction contract that may be used for TxCDBG projects can be found in *Appendix F*. These are the labor standards clauses to include:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages;
- Obligate the construction contractor to comply with the labor requirements;

[2] HUD handbook 1344.1 3-10(A)

- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages; and
- Enable the LSO to enforce the Federal labor standards applicable to the project.

NOTE: Incorporate *HUD-4010 Federal Labor Standards Provisions* **(Form 4010)** in the construction contract and provide to contractor with preconstruction information. See *Appendix A* for a link to form.

Step 7. Identify Additional Classifications and Wage Rates Needed
If the wage decision does not include a particular classification that is necessary for the project, the LSO may request an additional classification in writing. Submit to TDA a *Request for Additional Classification and Rate* **(Form A705),** along with a copy of the applicable wage decision for that particular construction contract. The request will represent what the employer (prime contractor or subcontractor) wants to pay workers performing a particular set of duties and must meet the following U.S. Department of Labor (DOL) regulations:

- The work to be performed by the additional classification is not performed by a classification already on the applicable wage decision;
- The classification is used by the construction industry in the area of the project; and
- The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.

NOTE: As a general guide, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. Trade classifications are generally all work classifications, excluding laborers, truck drivers, and power equipment operators. Additional classifications proposed for power equipment operators must specify the type(s) of power equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any power equipment operator that appears on the wage decision.

Do not include apprentices or trainee classifications in an additional wage rate request. The information on wage rates paid to apprentices and trainees is not solicited by DOL nor do the wage determinations issued include apprentice classifications.

TDA's DBRA Subject Matter Expert (SME) will review the requested classification and wage rate to ensure that all required information is submitted.

- TDA's DBRA SME will refer it to the DOL for final approval. The LSO will receive a copy of the final determination letter once the DOL has reviewed the request.
- If the DOL *does not* approve the request, the LSO will be notified about what classification and wage rate should be used for the work in question. The LSO will also receive instructions about how to ask for DOL reconsideration if the Grant Recipient would like to pursue the issue further. **NOTE:** If DOL has not responded before the completion of the TxCDBG contract, the Project Completion Report may still be submitted. The LSO will be informed of how to certify the Labor Standards compliance if this does occur.

Step 8. Contractor Posts Wage Decision at the Job Site
The prime contractor must post a copy of the wage decision and a copy of the DOL Davis-Bacon poster entitled Employee Rights under the Davis-Bacon Act at the job site in a place that is easily accessible to all of the construction workers employed at the project. See *Appendix A* for link to *Davis-Bacon Poster* **(Form WH-1321)**. If the contractor requests additional classification(s) as described above, the contractor must also post the notice of the request and the associated wage decision on the job site.

Step 9. Hold a Preconstruction Conference to Explain Labor Standards

The LSO must hold a preconstruction conference by phone, video call, or in person meeting with the prime contractor, and should include the engineer/architect, subcontractor(s), inspector(s), and all applicable utility companies prior to the start of construction. The Grant Recipient must document and retain preconstruction conference minutes, including a list of attendees and an outline of the required federal/state labor requirements. A sample checklist is included as *Pre-construction Conference and Report* **(Form A704)**.

The preconstruction conference should include:

- Advice to all parties regarding their responsibilities and obligations on a federally funded or federally assisted project;
- Discussion of applicable federal, state, local, and program guidelines;
- Discussion of all construction details, time frame of project, payment requirements, and labor standards;
- Delivery of all bonds and certificates of insurance to the Grant Recipient; and
- Delivery of all necessary general wage decisions, labor posters, and any additional classifications to the contractor along with instructions that will assist in completing the project.

Step 10. Review Project Payrolls During Construction

The LSO or other designated inspector must conduct an on-site visit to the project site and interview some of the workers concerning their employment on the project. In addition, the LSO must periodically review payrolls and related submissions to ensure that the labor standards requirements have been met. The LSO will notify the Grant Recipient if these reviews find any discrepancies or errors and will provide instructions about what steps must be taken to correct any problems.

On-site Interviews

The LSO **must** conduct employee interviews to verify that contractors are complying with labor standards requirements. Every employer (contractor, subcontractor, etc.) **must** make their employees available for interviews at the job site with the LSO, TDA's TxCDBG representative, HUD representative or DOL representative.

- Employee Interviews should be representative of all classifications of employees on the project. The number and quality of interviews documented should reflect that the LSO is diligently ensuring that workers are paid at least minimum prevailing wage rates.
- For every prime contractor and every subcontractor, a minimum of one employee in each classification must be interviewed, with at least 25% of the total number of the employees interviewed.
- The interviews are confidential, and the employee will be asked about the kind of work they perform and their rate of pay.
- Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work.
- Interview information must be recorded on the *Record of Employee Interview* **(Form A707)**
- If employees are not available for interview during the LSO's on-site visit, the LSO must document the date of the on-site visit, the reason employees were not available, and the attempt to obtain the required information through other means, such as mailed questionnaires.
- Failure to conduct employee interviews will result in a finding of non-compliance, and potentially disallowed costs. Contractors that refuse to make employees available may be reported to DOL, and LSOs that do not ensure interviews are conducted may receive an administrative penalty. Communication between the Grant Recipient, LSO, and prime contractor is critical to ensure that all required interviews are completed, especially when crews are only onsite for a short period of time.

Project Payroll Reviews
A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local contract files, beginning with the first week in which construction begins on the project and for every week after until the work is complete, unless construction is suspended with documentation. The LSO must review the payroll submissions to ensure that:

- Workers are properly listed on the payrolls for the days, work classification, and rate of pay (compare to interview forms);
- The payrolls are complete and signed;
- Employees are paid no less than the wage rate for the work classification shown;
- Apprentice and trainee certifications are submitted (where needed); and
- Employee authorizations for other deductions are submitted (where needed).

Apprentices and Trainees
Employees who meet the following definition may be employed as apprentices on Davis-Bacon project:

- A person 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 the State of Texas Apprenticeship Agency.
- A person in the 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 properly certified to be eligible for probationary employment as an apprentice.

Employed trainees must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been certified by that administration.

The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed.[3] This applies regardless of work classifications, which may be listed on the submitted payrolls and regardless of their skill level.

If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which the apprentice or trainee appears, the LSO must request from the employer to submit a copy of the apprentice's or trainee's registration and/or approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer must pay wage restitution to any affected apprentices and/or trainees. If the apprentices and/or trainees are not registered in an approved program, they must receive the journeyman's wage rate for the classification of work they performed.

Sample DOL Payroll Form **(Form A708)** is the suggested payroll format for TxCDBG projects. Employers may use any other type of payroll, such as computerized formats, as long as it contains all required information from **Form A708** and includes the Statement of Compliance and required contractor certifications.[4] See *Appendix A* for a link to DOL's fillable WH-FORM 347.

Step 11. Submit Construction Completion Reports

[3] 29 CFR Parts 5 and 29
[4] 29 CFR 5.5(a)(3)(ii)(B)

Upon completion of the construction contract, after all work has been completed including punch list items, a final inspection must be conducted and all parties must agree that the work is acceptable. Complete the *Final Wage Compliance* page of TDA-GO Materials and Services Report page for the contractor.

The LSO must certify the page for each construction contract. If the LSO identified labor standards violations, these must be reported on this page. In addition, complete the *Work Completed* page of the MSR.

Generate and print the Certificate of Construction Completion (COCC). Obtain the signatures of all parties accepting the work as completed and attach the signed document to the page before submitting for TDA approval.

The Materials and Services Report including *Final Wage Compliance* and *Work Completed* pages must be received and approved prior to the final reimbursement for each prime construction contract and the final engineering payment request. Failure to submit a fully executed COCC may result in the deobligation of any remaining construction funds, at TDA's discretion.

7.2.1 Restitution for Underpayment of Wages

Where underpayments of wages have occurred, the employer must pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less any permissible and authorized deductions.

Notification to the Prime Contractor
The LSO must notify the prime contractor in writing of any underpayments found during payroll or other reviews, see *Notice of Payroll Violation* **(Form A712)**.

- The notice must describe the underpayments and provide instructions for computing and documenting the restitution to be paid.
- The prime contractor is allowed 30 days to correct the underpayments.
- The prime contractor is responsible to the LSO for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing Wage Restitution
Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the *adjustment rate.* The adjustment rate times the number of hours involved equals the gross amount of restitution due.

Overtime and Underpayment
Overtime hours are defined as all hours worked on the work site in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits. If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- If the project is greater than $100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (CWHSSA*) overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project.
- The employer will also be liable to the Department of Labor (DOL) for liquidated damages (overtime violation dollar penalty) computed at the current monetary penalty established by DOL for each calendar day on which an overtime violation occurred. DOL publishes adjustments to penalties not later than January 15 of every year in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. A table of DOL's

current monetary penalties may be found in the in Resources section at the end of this Chapter**.** Contact the Labor Specialist at TDA for further information.

- Once liquidated damages are computed, the Grant Recipient must notify the prime contractor in writing of the fine and wage restitution owed. See the sample letter called *Notice of Determination to Assess Liquidated Damages* **(Form A713).** A check (payable to TDA) in the amount of the liquidated damages should be forwarded to TDA to be processed for HUD.
- The employer may request a reduction or waiver of liquidated damages under one or both of the following reasons:
  1. The computation of liquidated damages is incorrect; and/or
  2. The violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer. The employer's request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted. See *Waiver Request* (**Form A714)** for a sample of a waiver request, see HUD Handbook 1344.1 (5-12 B).

If liquidated damages are equal to or less than $100.00, the employer is encouraged to seek a reduction or waiver of liquidated damages.

Employers are not required to submit copies or checks (certified or otherwise) to TDA as proof of corrected underpayments. The employer reports and certifies restitution payments on a correction payroll, which is kept in local files.

Corrected Payrolls
The employer will be required to report the restitution paid on a corrected certified payroll. The corrected payroll will reflect the period of time for which restitution is due.

EXAMPLE: Payrolls #1 through #6; or a beginning date and ending date. The corrected payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A verified signed *Sample DOL Payroll Form* **(Form A708)** must be sent to the LSO.

Review of Corrected Payroll
The LSO will review the corrected payroll to ensure that full restitution was paid. The prime contractor must be notified in writing of any discrepancies and will be required to make additional payments, if needed, and documented on a supplemental correction payroll, within 30 days.

Inability to Locate Worker
Sometimes wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The LSO will continue to attempt to locate workers entitled to restitution for three years after the completion of the project. After three years, any amount remaining in the account for workers restitution will be credited and/or forwarded by the LSO to TDA.

NOTE: The prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors.

7.2.2 Labor Disputes

Administrative Review on Labor Standards Disputes

The labor standards clauses in the TxCDBG contract and DOL regulations provide for administrative review of issues by TDA where there is a difference of views between the LSO and any employer. The most common situations include:

Findings of Underpayment – Compliance reviews and other investigations may result in findings of underpayment. The employer will have an opportunity to provide additional information to the LSO that may explain apparent inconsistencies and/or resolve the discrepancies.

Withholding – The LSO may cause withholding of payments owed to the prime contractor to ensure the payment of wages which are believed to be due and unpaid.

EXAMPLE: If wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor.

Deposits and Escrows

If corrective actions or disputes continue after the project is completed, provisions must be made to ensure that funds are available to pay any wage restitution that is found due. In these cases, TDA allows the project to proceed to final closings and payments *provided* the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the LSO. When a final decision is rendered, the LSO makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- Where the parties have agreed to amounts of wage restitution that are due *but* the employer has not yet furnished evidence that all of the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers not supported by adequate documentation of payment. As proper documentation is received, amounts corresponding to the documentation are returned to the prime contractor. Amounts for any workers who cannot be located are held in the escrow account for three years and disbursed as described above. See Restitution on Underpayment of Wages.
- Where underpayments are suspected or alleged, and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the prime contractor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above. If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained earlier.
- Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit must be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Debarment

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the DBRA will be ineligible (debarred) to participate in any DBRA contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the LSO or can be initiated by the DOL on its motion. Debarment proceedings are described at 29 CFR 5.12.

7.3 Exemptions

The following contracts and activities are **exempt** from Davis-Bacon requirements except where indicated:

- Construction contracts of $2,000 or less;
- Construction contracts of $100,000 or less are exempt from CWHSSA only;
- Single-family homeowner residences;[5]
- Rehabilitation of residential property designed for fewer than eight families;[6]
- Demolition and/or clearance activities (for example, debris removal), unless related to construction; demolition and clearance as independent functions are not considered construction;
- Labor/installation charges on equipment or materials purchases, if that portion of the contract is less than 13% of the total cost of the item(s) purchased;
- Force Account construction work performed by the employees of the Grant Recipient that are engaged on an otherwise covered project; and
- Construction work performed by a public utility extending its own utility system.

The Grant Recipient must notify TDA if pursuing this method. TDA may request documentation prior to authorizing payment that the price charged by the public utility is less than the price that would be anticipated if the construction had been procured by sealed bids. With the exception of the situations listed in this section, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under the TxCDBG program must 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.

NOTE: The Fair Labor Standards Act (FLSA) is usually applicable, whether or not the DBRA or CWHSSA apply.

7.4 Recordkeeping Requirements

To show compliance with Davis-Bacon regulations, the Grant Recipient must maintain a file with the following documentation for each construction contract:

Labor Standards Documentation	**TDA-GO Reporting, if required**
Appointment of Labor Standards Officer	*Grant Overview* page
Copy of Wage Rate Issuance(s)	*MSR – Labor Standards page*
Ten Day Confirmation Date	*MSR – Main page*
Documentation of Ten Day Confirmation	n/a
Additional Classification request(s)	Email to Labors@TexasAgriculture.gov – once approved, TDA staff will record on *MSR – Labor Standards page*
Contractor Eligibility Verification printouts from SAM for each prime and/or subcontractor	n/a
Pre-construction conference minutes and sign-in sheet(s)	n/a
Payrolls, with evidence of compliance review	n/a
Employee interviews	n/a

[5] *Making Davis-Bacon Work—A Practical Guide for States, Indian Tribes and Local Agencies,* September 2011
[6] Ibid

Wage violations (amount of restitution, number of hours and days)	*MSR – Final Wage Compliance Report page*
Interim inspection reports	*n/a*
Certificate(s) of Construction Completion (COCC)	*MSR – Work Completed page*

7.5 Laws and Regulations

7.5.1 Laws Regarding Labor Standards

Davis-Bacon Act (40 USC *Chapter 31*, Subchapter IV)
Contract Work Hours and Safety Standards Act (CWHSSA)
Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 3145)
Fair Labor Standards Act
Housing and Community Development Act (Section 110)

7.5.2 Davis-Bacon Regulations

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations 29 CFR Parts 1, 3, 5, 6 and 7.

Resources

Resource Number	Description	URL
Form A707	HUD Form 11	http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf
	DOL's current monetary penalties	https://www.dol.gov/whd/resources/cmp.htm
	How to Complete the Grant Overview Page	TDA Forms website
	How to Initiate, Complete and Submit an MSR	TDA Forms website

*Note: these items will be updated as needed.