



TEXAS DEPARTMENT OF AGRICULTURE  
**COMMISSIONER SID MILLER**

**Texas Community Development Block Grant Program**

**Labor Standards**

Administrator Workshop



## Davis –Bacon Labor Standards

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- 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.

Within this Labor presentation we will give a brief description of:

The laws and regulations associated with federal labor standards administration and enforcement.

This will include CDBG contract requirements for Davis-Bacon compliance and the responsibilities of the Grant Recipient.



## Davis –Bacon Labor Standards

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### Davis-Bacon Related Acts:

- Applies to contractors and subcontractors
- For federally funded or assisted contracts
- Contracts that exceed \$2,000
- For construction, alteration, or repair

Labor Standards requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process.



## Objectives of Davis-Bacon

- Apply Davis-Bacon requirements properly;
- 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.

The five key labor standard objectives shown on the slide must be accomplished by the Grant Recipient and/or TDA in order to administer and enforce Davis-Bacon requirements and protect workers' rights.

By executing the TxCDBG grant agreement, Grant Recipients have agreed to administer and enforce Davis-Bacon requirements and have accepted the responsibilities described in Chapter 7



## Procedures for Labor Standards Compliance

- Step 1 - Designate a Labor Standards Officer (LSO) for the Project
- Step 2 – Obtain applicable Wage Decision for the project

### Step 1:

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

The LSO can be City, County, or Consultant

Note: LSO may change throughout the Grant period and if so it will need to be updated in TDA-GO.

### Step 2: Obtain an applicable wage decision

- 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
- 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.



## Procedures for Labor Standards Compliance

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- Wage Rate Classifications:
  - Highway Construction
  - Building Construction
  - Residential Construction
  - Heavy Construction

As previously mentioned there are four types of wage decisions:

- Highway Construction – projects including 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 – generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.
- Residential Construction – projects 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 – projects that are not properly classified as either building, highway or residential. It is a 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

Expand on dual wage rates and multiple of one.



## Procedures for Labor Standards Compliance

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- Step 3: Complete the Material and Services Report Labor Standards page
- Step 4: Include the Wage Decision in the Bid Documents

### Step 3:

The LSO must document the wage decision on the Labor Standards page of the MSR in TDA-GO. TDA staff will review the project description entered in the MSR and verify that the wage decision is appropriate. Confirmation of the wage decision must be received prior to the bid opening date.

The MSR form is a working document, so during the Group A phase you can also start entering information into the construction MSR. The description of work can be entered along with the wage decision number. Entering this information this early on allows time for technical assistance should it be needed.

### Step 4:

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.





## Procedures for Labor Standards Compliance

- Step 5. Ensure that the Wage Decision is Current Before Bid Opening
  - There are steps to follow if the wage decision is modified prior to bid opening

**Best Practice - create the MSR for construction and input the project description and wage decision number.**

### Step 5:

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.

- Take a screenshot that shows the WD# and if any modifications happened. This should also show the date the screenshot was taken. (I will have an example when we go through the MSR.)
- Save a copy of the wage decision with the current print date for the local file; and
- Enter the 10-Day verification date in the appropriate field in the MSR.
- If the construction contract is selected through small purchase or approved non-competitive procedures, then the RFQ date is the confirmed bid opening date.

If the wage decision is modified prior to the bid opening there are a number of ways this can be resolved. Please refer to Chapter 7 of the Imp Manual.



## Procedures for Labor Standards Compliance

- Step 6. Award the Construction Contract
- Step 7. Identify Additional Classifications and Wage Rates Needed
  - US Department of Labor (DOL) Regulations must be met.

### Step 6:

Award the construction contractor, there is a sample construction contract that may be used for TxCDBG projects and can be found in Appendix F.

**BEST PRACTICE:** Incorporate HUD Labor Standards (Form 4010) in the construction contract and provide to contractor with preconstruction information.

### Step 7:

Identify any need for Additional Wage Classifications.

During the pre-construction conference it should be identified if the wage decision does not include a particular classification that is necessary for the project, the LSO **must** request an additional classification in writing. This should be submitted to TDA using the **Additional Wage Classification and Rate (Form A705)**, along with a copy of the applicable wage decision for that particular construction contract. This request must be submitted to TDA as soon as it is determined, please do not wait until the end of the construction phase to submit this request.

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:

- Is not performed by a classification already on the applicable wage decision;
- 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.



## Procedures for Labor Standards Compliance

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### Step 7 Continued...

- TDA Subject Matter Expert (SME) reviews and submits Additional Wage Classification Request (AWCR) to DOL

- TDA's DBRA Subject Matter Expert (SME) will review the requested classification and wage rate to ensure that all required information is submitted.
- They will refer it to the DOL for final approval. Once approval is received, the SME will upload the letter to the Labor Standards page in TDA-GO.
- 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.

Please make sure AWCRs are submitted prior to closing your MSR

\*Ask Matthew to come talk about possible new process\*



## Procedures for Labor Standards Compliance

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- Step 8: Contractor Posts Wage Decision at the Job Site
- Step 9. Hold a Preconstruction Conference to Explain Labor Standards

### Step 8:

A copy of the wage decision and the DOL Davis-Bacon poster entitled Employee Rights under the Davis-Bacon Act should be posted at the job site in a place that is easily accessible to all of the construction workers employed at the project. As well as any Additional Wage Classifications

### Step 9:

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 LSO will advise all parties regarding their responsibilities and obligations on a federally funded or federally assisted project;
- Discuss applicable federal, state, local, and program guidelines;
- Discuss construction details, time frame of project, payment requirements, and labor standards;

- Deliver all bonds and certificates of insurance to the Grant Recipient; and
- Deliver all necessary general wage decisions, labor posters, and any additional classifications to the contractor along with instructions that will assist in completing the project9:



## Procedures for Labor Standards Compliance

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- Step 10. Review Project Payrolls During Construction
- Step 11. Submit Construction Completion Reports

### Step 10:

The LSO or other designated inspector will conduct on-site visit to the project site and interview some of the workers concerning their employment on the project. In addition, the LSO will 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. The interview information must be recorded on the Record of Employee Interview Form A707.

### Step 11:

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. Please refer to chapter 1.1.4 under Construction Complete group documents for further information.

**Failure to submit a fully executed COCC may result in the deobligation of any remaining construction funds, at TDA's discretion.**



## Procedures for Labor Standards Compliance

- Restitution for Underpayment of Wages
- Labor Disputes
- Exemptions
  - Contracts \$2,000 or less
  - Force Account
  - Public Utility Construction

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.

There are multiple steps that need to be taken to ensure proper restitution of underpayment of wages. Please refer to chapter 7.2.1 for additional information.

There are some common issues where there may be Labor Standard Disputes, for example: Findings of underpayment, withholding payments to the contractor, debarment, etc...

Some exemptions include:

- Construction contracts less than \$2,000
- Force Account construction work
- Construction work performed by a public utility extending its own utility system



## Labor Standards - Recordkeeping

<b>Labor Standards Documentation</b>	<b>TDA-GO Reporting, if required</b>
Appointment of Labor Standards Officer	<i>Grant Overview page</i>
Copy of Wage Rate Issuance(s)	<i>MSR – Labor Standards page</i>
Ten Day Confirmation Date	<i>MSR – Main page</i>
Documentation of Ten Day Confirmation	n/a
Additional Classification request(s)	Email to <a href="mailto:Labors@TexasAgriculture.gov">Labors@TexasAgriculture.gov</a> – once approved, TDA staff will record on <i>MSR – Labor Standards page</i>
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
Wage violations (amount of restitution, number of hours and days)	<i>MSR – Final Wage Compliance Report page</i>
Interim inspection reports	n/a
Certificate(s) of Construction Completion (COCC)	<i>MSR – Work Completed page</i>

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

You can find this in Chapter 7



## Changes to an executed Contract

- **Change orders are:**
  - A change in specifications;
  - A decrease or increase in the quantity of work to be performed;
  - A decrease or increase of materials, equipment or supplies to be furnished; or
  - A change in the contract duration
- **Change orders are not:**
  - Price adjustments
  - Increase or decrease to Labor Costs
  - Increase to original contract price more than 25%
  - A change to the overall original contract price

When changes are made to the construction contract these changes must be documented through a change order or addendum to the contract. This includes: change in specs, decrease or increase in quantity of work, materials, equipment or supplies, or the contract duration.

Change orders for an increase of more than 25% will be rejected. Please keep in mind that the State of Texas considers a change in the construction contract price of greater than 25% to be non-competitive.

Decreases in the original contract price of more than 25% for municipalities and 18% for counties, require written contractor consent

If a change order is necessary for a non-construction contracts (engineering or administration) the 16% for admin and 25% for engineering thresholds will apply. An addendum will be required for this change order in place of the construction change order form.

Change orders do not adjust the original contract price or increase or decrease labor costs.

TDA must approve all change orders to ensure costs are eligible and procured according to TxCDBG requirements.



# Construction MSR

## Pre-Selection Clearance

Relevant Environmental AUGF Date:

Confirmed Bid Opening/Selection Date:

10 Day Verification:

Confirmed Wage Decision must be entered on the MSR Labor Standards page no later than:

LSO confirms the approved Wage Decision remains in effect:

Screen shot confirmation of 10 Day Verification

(computer date/time must be visible within the screenshot)

 

Date posted to at least one organization providing access to and assistance with bid opportunities, particularly those that recognize small and disadvantaged businesses that are likely to include Section 3 Businesses:

Grant Recipient confirms that a minimum of two service providers who were solicited to respond to this procurement meet the definition of woman-owned business enterprise, minority-owned business enterprise, or Section 3 business concern.

Weblink or email address for bidders to request Bid Packet:

- New headers
- 10-Day verification date
- Screen shot of WD showing if any mods occurred or not since the WD was first pulled (6-10 days prior to bid opening)



## Construction MSR Cont.

Description of Efforts to promote MBE/WBE and Section 3 Participation: \*

0 of 4000

Bid Inconsistencies \*

If any bid contains internal inconsistencies, provide the method used to interpret the actual bid price and the source for that interpretation.

(ex. Bid prices are calculated based on the unit price provided, as described in the bid packet.)

If there are no inconsistencies, please enter "N/A".

0 of 4000

- Field for bid inconsistencies, intended to explain if there were any errors in the bid tab and method used to interpret the actual bid price.



## Construction MSR Cont.

### Documentation of Selection Process

#### Documentation of award by local governing body: \*

(Minutes of award, resolution adopted for award, or Form A509 Construction Award Detail Certification)

Browse

Drag Files Here

#### Bid tab / Small Purchase quotes: \*

Browse

Drag Files Here

The Description of Work field above accurately reflects the work awarded.



The bid tab identifies all items subject to BABA



#### Calculation of unit conversion:

If the units defined in the bid/contracting process differ from the types of units identified in the Grant Agreement, provide a conversion from the engineer comparing the project as awarded to the project described in the Grant Agreement

Browse

Drag Files Here

- New drop downs under the bid tab, one to confirm description of work above accurately reflects the work awarded.
  - The other is to ensure that the bid tab identifies all items that are subject to BABA
- The calculation of unit conversion attachment field is intended to provide any units of measure that differ from the performance statement. (Ex. Square yards to linear feet)





# Construction MSR Cont.

## Complete MSR Labor Standards Page

### MSR - Labor Standards

Instructions:  
Please complete this page and press the save button.  
Required field are marked with an \*

**Detailed Project Description**  
Used to confirm accurate wage classifications.

Replacement of curb and gutters, install concrete, remove asphalt, rehabilitate drainage flume, and all associated appurtenances.

Wage Decision Number *	County Work Performed In *	Date WD Published *	Type of WD *	This is a revised WD after TDA initial review	This WD is included in the final bid packet/contract
TX20240002	Lubbock County	01/05/2024	Highway Construction	<input type="checkbox"/>	<input type="checkbox"/>

If empty, reason

Attach copy of WD

Date Wage Decision approval requested

Revision / update to wage decision; requested send Document Message to TDA Labor Standards Specialist

There is now a detailed description field in the Labor Standards page for more detailed bid/work to be completed description. This is to help determine the most applicable wage decision.

There is also a checkbox in case there is a revision to the wage decision



# Construction MSR Cont.

## TDA Use Only

WD Approved by TDA SME \*   +

TDA Comments:

## DBRA Additional Wage Rates

Submit requests for Additional Wage Rates (Form A705) to [Labors@TexasAgriculture.gov](mailto:Labors@TexasAgriculture.gov).

Proposed Additional Classifications	Date Submitted to DOL	Date Approved by DOL
<input type="text"/>	<input type="text" value="MM/DD/YYYY"/>	<input type="text" value="MM/DD/YYYY"/>

DOL Form 1444   +

Just a reminder that the AWCR's are added at the bottom of the Labor Standards page. This is where the approvals will be attached.



# Wage Decision Examples

7/17/24, 2:15 PM SAM.gov

An official website of the United States government [Skip to main content](#)

**Important Reqs and Certs Update** Show Details ✕  
Mar 1, 2024 See All Alerts

**Entity Validation Processing** Show Details ✕  
Jul 16, 2024

**SAM.GOV**

Home Search Data Bank Data Services Help

**Wage Determination**

Overview Document History

WAGE DETERMINATIONS

**Davis-Bacon Act WD # TX20240084**

Wage Determination

**Modifications**  
0

**Construction**  
Heavy

**Published Date**  
Jan 05, 2024

7/17/24, 2:15 PM SAM.gov

General Decision Number: TX20240084 01/05/2024

Superseded General Decision Number: TX20230084

State: Texas

Construction Type: Heavy

Counties: Cass, Cherokee, Erath, Fannin, Franklin, Hood, Hopkins, Marion, Montague, Morris, Nacogoches, Navarro, Palo Pinto, Panola, Rains, Red River, Somervell, Titus, Van Zandt and Wood Counties in Texas.

### HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.



## Compliance Findings

### Common Labor Standard Compliance Findings:

- Awarding the contract prior to SAM clearance
- 10 Day wage verification
- Additional Wage Classification
- Record Keeping

Last thing I want to go over are some common labor standards compliance findings to keep in mind as we end the this presentation.

Awarding the contract prior to making sure the contractor is cleared in SAM.gov

Verifying the wage decision in the required time frame and submitting the 10 Day Confirmation between 6-10 days prior to the bid opening. Also not entering the wage decision number and attachment prior to the bid opening. I mentioned before but this is a working document and is not meant to be completed once all procurement, award, and execution has happened. This should be entered as you receive information.

Additional Wage Classification and Rate requests not being submitted prior to PCR or waiting till the end of construction to submit the request.

And, record keeping. *TDA is audited on a regular basis by HUD and there may be a time when TDA requests certain documents from the Grant Recipients files. So, record keeping is very important!!*

# Questions/Comments



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