

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
PROGRAM SERVICES DIVISION
DAVIS-BACON – LABOR STANDARDS GUIDE

Development Owners who are awarded Federal funds in multifamily contracts by the Texas Department of Housing and Community Affairs (the Department) must comply with Davis-Bacon Labor Standards administrative and enforcement responsibilities if the following thresholds apply:

HOME, TCAP and ARRA Contract(s) – Funds are used to acquire and/or construct and/or rehabilitate a single residential Project consisting of twelve (12) HOME, ARRA and/or TCAP-assisted units.

CDBG and NSP Contract(s) – CDBG funds are used to *construct* a residential Project containing eight (8) or more CDBG or NSP-assisted units.

Development Owners responsible for labor standards compliance must adhere to the Department’s established procedures listed below:

Step 1. Labor Standards Officer

Prior to loan closing or start of Project construction, designate a Labor Standards Officer (LSO). The LSO is responsible for enforcing Davis–Bacon provisions, and must serve as liaison to the Department. Submit the completed *Appointment of Labor Standards Officer – Form 06.02* to the Department’s Labor Standards Specialist (LSS).

NOTE: *Contract Administrator must designate an LSO before funds are disbursed, even if the HOME award will be used only for **acquisition** purposes.*

Responsibilities of the LSO include, but are not limited to, the following:

- Ensuring the *Federal Labor Standards Provisions - Construction Contract Attachment (HUD Form 4010)* is attached to all construction contracts executed for the Project (e.g., general contractor, subcontractor and lower tier contractors).
- Ensuring a construction management system is in place which makes applicable that labor standards requirements, including Davis-Bacon prevailing wage rates, are applied appropriately. The LSO must set up a labor standards enforcements filing system which includes all required support documentation evidencing compliance.
- Ensuring that no contract is awarded to a contractor or subcontractor who is ineligible to perform federally-assisted work (i.e., debarred, suspended, and/or proposed for debarment). General contractors (prime contractors) and subcontractors, including lower-tier subcontractors, must be cleared on HUD’s Excluded Parties List System (EPLS) debarment list. Confirmation of federal status must be obtained on-line at: <https://www.epls.gov/>.
- Reviewing certified payroll reports and related documentation to ensure proper listing of:
 - workers;
 - days worked;

Visit www.hud.gov/offices/olr/library.cfm for information on compliance with federal Labor Standards.

- work classifications; and
- rates of pay, including overtime pay, if applicable.

The LSO must also ensure payrolls are complete and signed and that employees are paid no less than wage rate applicable to the work classification. Where underpayments of wages have occurred, the LSO must ensure the employer promptly pays the worker any required restitution. Repeat violations must be documented and pursued in accordance with federal labor laws.

- Conducting on-site inspections, including interviews, with laborers and mechanics employed on the construction Project. The LSO must then review payrolls and related submissions, and compare the interview information to the certified payrolls to ensure that prevailing wages paid to workers are consistent and labor standards requirements are met. The LSO is also responsible for ensuring the “Notice to All Employees” poster is prominently displayed at the job site.

Step 2. Preconstruction Conference

Prior to the start of Project construction the Department’s Labor Standards Specialist (LSS) and the Development Owner’s LSO must ensure a Preconstruction Conference is conducted with, at a minimum, the Development Owner and General Contractor.

The Department’s Preconstruction Conference form, *A Record of Pre-Construction Conference (Form 11.07)*, which is provided to the Development Owner when the conference is scheduled, must be used to document the Preconstruction Conference. During the Preconstruction Conference, participants must be advised of all applicable federal, state, local and program guidelines.

- In addition, construction details, time frame for completion of Project, payment requirements, and Davis-Bacon labor laws must be discussed.

Step 3. Notice To Proceed (NTP)

Prior to starting Project construction, the Development Owner must have received from the Department’s LSS the *Notice To Proceed (NTP)*, which will include the Department of Labor (DOL) General Wage Decision for the county in which the Project is located. The NTP serves as the Department’s federally-required ten (10) day call, and serves to lock-in applicable prevailing wages throughout the construction phase. Before an NTP may be re-released by the LSS, the Development Owner must:

- Designate a Labor Standards Officer (LSO) and submit the completed *Appointment of Labor Standards Officer – Form 06.02* to the Department’s LSS;
- Conduct a Preconstruction Conference using the form provided by the Department and submit the completed form, including signatures of all conference participants, to the LSS;
- LSO verifies with Labor Standards Specialist TDHCA loan closing is confirmed; and
- Submit a copy of the building permit provided by the local jurisdiction authorizing start of construction.

NOTE: Participation by the Department’s LSS in the preconstruction conference is contingent upon the Development Owner’s performance history with the Department and demonstrated knowledge of and experience with Davis-Bacon labor laws. Determination of required participation is at the discretion of the Department’s LSS.

Step 4. Davis-Bacon Compliance and Disbursements

In order to receive a disbursement of HOME funds, the Development Owner must ensure the following:

- **Acquisition and loan closing costs** (first draw, or for acquisition-only, the only draw) – submit the completed of *Appointment of Labor Standards Officer – Form 06.02* to the LSS;
- **Project construction costs** (first draw) – comply with Notice to Proceed procedures listed under **Step 3** (above). Failure to receive a Notice To Proceed from the Department’s LSS **prior to demolition (for reconstruction) and/or the start of Project construction (for new construction)** may render any construction costs incurred as ineligible for reimbursement.

NOTE: Notice To Proceed will not be released unless TDHCA Loan Closing Specialist confirms TDHCA loan is closed and a copy of the Building Permit and/or letter from the City authorizing Project construction is received.

*NOTE: Demolition of a structure **IS** considered construction under federal regulations. A Development Owner must ensure adherence to the Department’s established labor standards procedures **prior** to the start of any construction activity.*

- **Release of Retainage** (final draw) – Submit the *Final Wage Compliance Report (Form 06.01)* to LSS upon completion of Project construction for review and approval by the LSS prior to submitting the request for release of retainage. The disbursement team will not approve Retainage release until the LSS confirms receipt and approval of the *Final Wage Compliance Report (Form 06.01)*.

*NOTE: Contracts subject to the Department’s labor standards provisions are also subject to selection for monitoring and review at any time by the Department’s **Portfolio Management Compliance (PMC)** Division. Selection of Contracts to be monitored is based on a risk assessment. PMC will monitor Contracts by conducting desk reviews and performing on-site monitoring.*