

Chapter 6: Labor Standards and Construction Management

Introduction

Construction projects funded with KCDBG require that certain procedures be followed to comply fully with applicable federal and state requirements. For example, federal and state labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment of workers on construction projects.

This chapter describes the policies and procedures that must be followed when undertaking construction projects with KCDBG funds, including bid preparation, compliance with labor standards, pre-construction meetings and inspection and approval procedures.

Section 6-A. Pre-Bidding Requirements

The first step in effective management of KCDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification – usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Please refer to Chapter 4: Procurement for more guidance on bidding.

[Chapter 4: Procurement](#)

Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in Kentucky. Water and sewer projects also require the approval of various state agencies. While the engineer/architect prepares the technical specifications, the Certified Grant Administrator must determine the applicability of Labor Standards and request the necessary wage decisions (see Section B of this chapter).

Note: The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to Chapter 2: Environmental Review for more information.

Property Acquisition Issues

At this stage of the process, the grantee must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. All property to be acquired for any activity, funded in whole or in part with KCDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies for Federal and Federally Assisted Programs (42 U.S. Code Chapter 61), also referred to as the Uniform Act or URA. Included in the definition of property, among other things, are rights-of-way and easements. If the construction project involves real property acquisition, the grantee should contact its DLG Program Advisor very early and make sure the acquisition is done according to the provisions of the Uniform Act. See Chapter 9: Acquisition for additional information.

[Chapter 9: Acquisition](#)

Section 6-B. Determining the Applicability of Labor Provisions

Federal Requirements

Most construction projects including alteration, repair or demolition, funded in whole or in part with federal dollars, must comply with federal labor standards provisions. Applicable laws include the following:

- ✓ The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction work that is financed in whole or in part with CDBG funds of more than \$2,000.
- ✓ The Copeland Anti-Kickback Act requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.
- ✓ The Contract Work Hours and Safety Standards Act requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all KCDBG-assisted construction contracts of \$100,000 or more.

Davis-Bacon Act: 40 USC, Chapter 3, Section 276a-276a-5

Copeland Anti-Kickback Act: 40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874

Contract Work Hours and Safety Standards Act: 40 USC, Chapter 5, Sections 326-332

Tip: HUD had published two guides that are available for downloading on labor standards requirements. These documents are “Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies” and “Making Davis Bacon Work: A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.” HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements.

Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- ✓ Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to circumvent the requirements is not permitted.
- ✓ Rehabilitation of residential structures containing less than eight units. See Chapter 10: Housing for other rehabilitation requirements.
- ✓ Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, and certain pieces of equipment that would not become permanently affixed to the real property. Exempt equipment purchases would be those that are incidental to the project that require minimal installation costs. Please contact DLG for equipment installations to determine whether the labor requirements will apply.

Chapter 10: Housing

- ✓ Simple water and sewer line extensions without pumps, tanks, etc. may also be exempt. Grantees must first check with DLG staff.
- ✓ Separate and distinct projects. In some cases, an activity can occur in the same vicinity as another activity, but because it is a separate and distinct project, labor provisions may apply to one and not the other. Contact DLG for guidance.

Contracts solely for demolition, when no construction is anticipated on the site.

DLG should be contacted if there is any situation where Davis-Bacon applicability is in question.

Equipment and Installation

When CDBG funds are utilized in whole or in part to finance equipment, the applicability of wage rates to the installation must be determined. The general rule is that installation work performed in conjunction with an equipment supply contract is subject to labor standards where it involves more than an incidental amount of construction activity. Factors requiring consideration include: nature of the prime contract work; type of work performed by employees installing the equipment; extent to which structural modifications to buildings are needed to accommodate the equipment; the cost of the installation work both in terms of absolute amounts as well as in terms of the proportion of the total equipment and project cost. An equipment analysis must be completed in which all items of equipment are included with an explanation of related installation/modification costs and submitted to DLG to make a proper determination.

State Requirements

Prior to January 17, 2017, the Kentucky Prevailing Wage Law at KRS Chapter 337.505-550 required state prevailing wages be paid by any public authority for construction of any public works project fairly estimated to cost more than \$250,000. **The KY prevailing wage requirement was repealed by the Governor as of January 7, 2017.** Therefore, projects for which bids had been awarded prior to that date are subject to the previous state prevailing wage requirements, while projects for which bids have NOT been awarded by that date are NOT subject to the state prevailing wage requirements.

KRS Chapters 337.505-550,
337.010, 337.285 and 33.540

The state overtime requirements of KRS Chapter 337.285 regarding payment of time and one-half for hours in excess of a 40-hour workweek will continue to apply to all contracts, unless exempt. Kentucky also requires employers to pay employees overtime at the rate of 1½ time their regular rate for all hours worked on the seventh day when an employee works seven days in a work week, unless exempt.

The state overtime requirements of KRS Chapter 337.540 (time and one-half for hours over eight in a workday) were repealed along with the state prevailing wage requirements and will only apply to contracts that were subject to state prevailing wage rates, which means only projects for which contracts were awarded prior to the January 7 repeal of the prevailing wage requirement. For those projects still subject to the 8-hour workday overtime requirements (i.e., those awarded prior to January 7, 2017), the state requires that a contractor enter an agreement with each participating employee in order to waive the eight (8) hour overtime provision in favor of a four (4), ten- (10) hour day week. A sample Kentucky Prevailing

Attachment 6-18:
Sample Kentucky Prevailing Wage
Overtime Agreement

Wage Overtime Agreement for the projects subject to the prior requirements can be found in Attachment 6-18 for this purpose.

Section 6-C. Bidding and Contracting Requirements

A grantee or the grant administrator must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in Chapter 4). The grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

Chapter 4: Procurement

Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Once it is determined that a construction project is subject to federal and/or state labor standards provisions, the following steps must be taken to ensure compliance.

Step 1: Request Applicable Federal Wage Rate Decision

The grantee may access federal wage rate decisions through the Internet at <http://www.dol.gov/>. However, in order to ensure accuracy, the grantee **must** request the applicable federal wage rate decision from DLG using Attachment 6-1: Request for Determination of Wage Rate form. **This form must be submitted a minimum of 30 days in advance of binding bid documents**, though the turn-around time from DLG is usually much quicker than this. DLG prefers your request to be in the form of an email. **Be sure to include the appropriate return email address as requested on the form.**

Attachment 6-1:
Request for Determination of
Wage Rate

Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. Most KCDBG construction projects will involve either Building or Heavy determinations. In determining which type of wage decision to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

- ✓ **Building construction** generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
- ✓ **Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
- ✓ **Highway** projects include construction, alteration or repair of roads.
- ✓ **Heavy construction** is generally considered for all construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

A grantee's DLG Program Advisor should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary.

NOTE: State prevailing wage requirements were repealed as of January 7, 2017, and thus do not apply to projects awarded after that date.

Step 2: Add Labor Provisions to the Bid Package

The wage rate decision must be a physical part of the bid package. The bid package must contain the labor standards requirements, which are summarized below and separately in this Chapter as Attachment 6-2.

Attachment 6-2:
Federal Labor Standards Provisions
(HUD 4010)

- ✓ Davis-Bacon provisions;
- ✓ Contract Work Hours and Safety Standards clause;
- ✓ Copeland Anti-Kickback clause;
- ✓ Employment of Apprentices/Trainee clause; and
- ✓ Applicable wage rate determination(s).

Caution: If the grantee fails to include the correct wage rate determination(s), the grantee will be responsible for paying the difference between the proper wage rate and the wages paid by the contractor based upon the information provided in the bid package. Also, the grantee *must* make the “Nine-Day Call” to DLG to confirm the wage rates. This requirement is described in detail in Chapter 4: Procurement.

Preparing Contracting Procedures to Meet Equal Opportunity Requirements

The grantee must review all draft bid and contract documents to ensure compliance with equal opportunity requirements and establish procedures for monitoring compliance during project execution. The following equal opportunity provisions and signed contractor and subcontractor certifications must be included in all bid and contract documents:

- ✓ Certification of Bidder regarding Section 3;
- ✓ Certification by Proposed Subcontractor regarding Section 3 Segregated Facilities;
- ✓ Certification of Bidder regarding Equal Employment Opportunity;
- ✓ Contractor Section 3 Plan Format (if project exceeds \$200,000);
- ✓ Certification by Proposed Subcontractor regarding Equal Employment Opportunity;
- ✓ Three-paragraph Equal Opportunity Clause for Activities and Contracts not subject to Executive Order 11246 (if contract is less than \$10,000);
- ✓ Executive Order 11246 clause (if contract is \$10,000 or above);
- ✓ Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (if contract over \$10,000);
- ✓ Standard KCDBG-assisted Equal Employment Opportunity Construction Contract Specification (if contract over \$10,000);
- ✓ Certification of Non-segregated Facilities clause (if contract over \$10,000);
- ✓ Title VI Clause, Civil Rights Act of 1964;
- ✓ Section 109 clause, Housing and Community Development Act of 1974;

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- ✓ Section 3 Compliance in the Provision of Training, Employment and Business Opportunities clause (if contract exceeds \$100,000);
 - ✓ Rehabilitation Act of 1973, Section 503 Handicapped clause (if contract \$2,500 and above);
 - ✓ Section 402 Veterans of the Vietnam Era clause (if contract over \$100,000); and
 - ✓ Age Discrimination Act of 1975 clause.

Female and Minority Participation Requirements

Grantees should pay particular attention to the Standard KCDBG-assisted Equal Employment Opportunity Construction Contract Specifications. These specifications include a place for the grantee to insert both minority and female goals. The nationwide goal for female participation is 6.9 percent.

Minority goals are specific to “Economic Areas,” so the grantee must refer to the regulations for the minority goal for their locality. Attachment 6-3 lists the female and minority participation goals by county.

The Minority Employment Goals by Economic Area for State of Kentucky apply to each construction craft and trade in the contractor’s entire workforce that is working in an area covered by goals and timetables and not just on those jobs that are KCDBG-assisted. A contractor with a KCDBG contract in Standard Metropolitan Statistical Area (SMSA) X and a non-KCDBG assisted contract in SMSA Y must meet SMSA X goals for the workforce in SMSA X, and SMSA Y goals for the workforce in SMSA Y, even though that contract is not KCDBG-assisted.

Attachment 6-3:
Goals for Female and Minority
Participation

These goals for contract specifications make written affirmative action plans unnecessary unless the U.S. Department of Labor, Office of Federal Contract Compliance Programs determines a specific contractor or group of contractors needs to establish higher goals in order to remedy the effects of past discriminatory behavior.

Other Bidding and Contracting Requirements

Overview

KCDBG and the entities to which it provides certain U.S. Department of Housing and Urban Development (“HUD”) funding must comply with the Build America, Buy America Act (“BABA”) enacted under Division G, Title IX, Subtitle A, Parts I-II, Sections 70911 - 70927 of the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117- 58). The purpose of BABA is to increase the use of American-made goods, services, products, and materials in federally funded infrastructure projects by requiring all Iron and Steel, Construction Materials, and Manufactured Products used in federally funded infrastructure projects be produced in the United States. The subsequent requirements, known as the Buy America Preference (“BAP”), as detailed in [2 CFR 184](#) are applicable. A Recipient, Subrecipient, Subgrantee, Contractor and/or Subcontractor must comply with BABA and the BAP. This Compliance Plan summarizes the requirements of [2 CFR 184](#) as they pertain to the HUD programs administered by KCDBG. The Plan outlines what KCDBG and its housing partners must do to comply with BABA and the BAP and identifies the record-keeping and reporting requirements which must be met. **For purposes of BABA and the BAP, multi-unit rental housing greater than four units is considered infrastructure.**

Definitions

- ✓ **Construction.** For purposes of this Compliance and Implementation Plan “construction” includes rehabilitation.
- ✓ **Contractor.** An entity which has entered into a contract directly with a Subgrantee.
- ✓ **Developer.** For HUD Programs, Developer means the individual or entity responsible for the design and construction of the project and the administration of the Federal financial assistance provided to the project. A Developer may act as part of the ownership entity.
- ✓ **Grantee.** For the purposes of the KCDBG HUD Programs & BABA Policy, grantee may be State recipient, subrecipient, developer, and/or contractor.
- ✓ **Subrecipient.** Any non-federal entity which receives a subaward of HUD funds from KCDBG to fund a program they have established.
- ✓ **Subcontractor.** An entity which has a contract with a Contractor, or other Subcontractor, to undertake a portion of the Contractor’s, or Subcontractor’s obligation to perform work in connection with a Project.
- ✓ **Program Income.** The term “Program Income” means income generated from a grant- supported activity.
- ✓ **Project.** The term “project” is defined at [24 CFR 58](#) as: “an activity or group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective.” This definition is used when no program specific definition of a project exists. Grantees cannot split an infrastructure project to avoid application of the BAP to the project, such as by dividing procurements, subgrants, cooperative agreements, etc., into separate and smaller awards or contracts, particularly where the procurements, subgrants, cooperative agreements, etc., are integrally and proximately related to the whole.

BABA General Provisions

BABA requires that certain materials purchased in connection with infrastructure projects, which includes all housing projects of 5+ units developed and funded by Federal financial assistance programs be produced in the United States. This requirement is known as the Buy America Preference (“BAP”).

An infrastructure project is defined as any project that includes construction, alteration, maintenance, or repair of buildings and real property; utilities; water systems (drinking water and wastewater); electrical transmission facilities and systems; broadband infrastructure; and transportation infrastructure.

Any federally funded infrastructure project that uses iron and steel, manufactured projects and/or construction materials must ensure the materials are produced in the United States.

Categorization must be made based on the item’s status at the time it is brought to the work site for incorporation into the project. Minor additions of articles, materials, supplies, or binding agents to a Construction Material do not change the categorization of the Construction Material. If an item can be classified as [Section 70917\(c\)](#) Material, Iron or Steel, or Construction Material, it cannot be categorized as a Manufactured Product. However, a Manufactured Product may consist of [Section 70917\(c\)](#) Materials, Iron or Steel, or Construction Materials.

Products should be classified based on their status when they arrive at a project site. Products should be classified into one of the three following categories, but not more than one category:

Iron and Steel:



The term “iron and steel products” is defined in [2 CFR 184.3](#) and means articles, materials, or supplies that consists wholly or predominantly of iron or steel, or a combination of both.

Predominantly iron or steel or a combination of both is defined in [2 CFR 184.3](#) and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

- ✓ All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured Product

Manufactured Products is defined in [2 CFR 184.3](#) and means:

- ✓ Articles, materials, or supplies that have been:
 - Processed into a specific form and shape; or
 - Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- ✓ If an item is classified as an iron or steel product, a construction material, or a section [70917\(c\)](#) material under [2 CFR 184.4\(e\)](#) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under [2 CFR 184.4\(e\)](#) and paragraph (1) of this definition may include components that are construction materials, iron materials.
- ✓ The product was manufactured in the United States and the cost of the components of the Manufactured Product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the Manufactured Product.

Construction Material: Articles, materials, or supplies that consist of one of the following items:

- ✓ **Non-ferrous metals.** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- ✓ **Plastic and polymer-based products.** All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- ✓ **Glass.** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

- ✓ **Fiber optic cable (including drop cable).** All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others.
- ✓ **Optical fiber.** All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- ✓ **Lumber.** All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- ✓ **Engineered wood.** All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.
- ✓ **Drywall.** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

Not Listed Construction Materials

The term “not listed construction materials” refers to the category of construction materials that are subject to the BAP, but not included in HUD’s specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:

- ✓ Plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
- ✓ Glass (including optic glass); and
- ✓ Drywall.

Produced in the United States is defined in [2 CFR 184.3](#) and means:

- ✓ In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ✓ In the case of manufactured products:
- ✓ The product was manufactured in the United States; and
- ✓ The cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See [2 CFR 184.2\(a\)](#). The costs of components of a manufactured product are determined according to [2 CFR 184.5](#).
- ✓ In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See [2 CFR 184.6](#) for more information on the meaning of “all manufacturing processes” for specific construction materials.

Section 70917(c) Material: The term “section 70917(c) materials” is defined in [2 CFR 184.3](#) and means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Federal Register Notice implementing new BABA regulations at [2 CFR 184](#) (88 FR 57787) clarifies that all categorizations of Covered Materials should be made based on the status of the material when it arrives at the work site. Section 70917(c) materials that are used at the work site, such as wet concrete or hot asphalt, are not subject to the BAP.

However, Section 70917(c) materials may be components of manufactured products if, for example, they are used to produce precast concrete products before being transported to the work site.

Uncategorized: Articles, materials, or supplies which do not fit within the definition of another categorization

Excluded Costs

- ✓ Technical Assistance and Management Costs
- ✓ Design and Planning Costs
- ✓ Labor
- ✓ Projects funded solely with Program Income
- ✓ Labor and service fees for utilities. If a utility company installs a meter for utilities at the project, if the project is not purchasing the meter and is only paying the installation fee and ongoing service fees, the meter would not need to comply with BABA as it is not a product purchased for the project.

For more information and additional guidance on BABA you may visit HUD's website at [Build America, Buy America Act - HUD Exchange](#)

Projects required to comply with BABA

In addition, BAP does not apply to projects funded solely with program income generated through any HUD CPD program. Program income is not considered as federal financial assistance (FFA).

If a project has multiple sources of federal funding, the Federal Agency contributing the greatest amount of Federal funding for the project may be considered the Cognizant Agency for Made in America and may take responsibility for coordinating with other Federal awarding agencies. Each Federal Agency waiving the BAP must make its own waiver determination. A Cognizant Agency cannot independently issue a waiver that applies to other Federal agencies.

BABA Compliance for HUD Programs

Subrecipients Responsibilities

Include the required BABA language in the Project's bid specifications and provide KCDBG with a copy of the specifications.

Ensure all requests for bids and all contracts related to the Project clearly indicate the contract and work is subject to BABA requirements.

Ensure each contract associated with the Project which includes a Contractor, Subcontractor, or Subgrantee discloses BABA's applicability. KCDBG must receive a copy of all contracts.

Collect and review for completeness and accuracy, required BABA documentation from all Contractors and Subcontractors throughout the Project's development:

- ✓ Any contract's execution

- Fully completed & executed Entity Profile Package
- Contract includes disclosure of BABA’s applicability
- ✓ Each draw request, regardless of the source of funds used to fund the draw
- ✓ BABA Contractor Self Certification (**Appendix B**) from each entity to be paid. OBJ

Contractor and Subcontractor Responsibilities

Ensure all requests for bids and all contracts related to the Project clearly indicate the contract and work is subject to BABA requirements. The following language must be included on all plans, specifications and contracts:

“ _____ (entity name) (“Entity”) must comply with the requirements of the Build America, Buy America Act (BABA), as defined in 2 CFR § 184.3 as division G, title IX, subtitle A, parts I-II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), and all applicable rules and notices, as may be amended. Pursuant to HUD’s Notice, “CPD Implementation Guidance for the Build America, Buy America Act’s Buy America Preference” (CPD-25-01), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. Developer is responsible for documenting compliance and ensuring that all contractors and subcontractors provide the required information to document compliance.”

Ensure each contract associated with the Project that includes a Contractor or Subcontractor discloses BABA’s applicability and includes, at least by reference, this BABA Compliance Plan. KCDBG reserves the right to review and receive a copy of all contracts to ensure this information is included.

Collect and review, for completeness and accuracy, required BABA documentation from all Subcontractors throughout the Project’s development:

- ✓ Any contract’s execution
 - Fully completed & executed Entity Profile Package
 - Contract includes disclosure of BABA’s applicability
- ✓ Each pay application / request for payment
 - BABA Payment Request Certification brought up to date

Draw Reimbursement Process

Projects subject to BABA requirements will be required to provide Construction Material Spreadsheet (**Appendix F**) and Made in America Certification documents. KCDBG will withhold payment if the grantee is not in compliance with BABA requirements. Failure to comply with the BABA requirements may result in a loss of funding and default and may result in a loss of funding for future projects.

Grantee must attach certifications for each product certifying that products are made in America. Acceptable forms of certification are as follows:

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- ✓ A certificate from the manufacturer or reseller that the product complies with BABA. Appendix H is an example of an acceptable form of certification. The certification must have the BABA language and must be on the company's letterhead and list the products with enough specificity to determine compliance.
 - ✓ For products that cost less than \$100 per product, a copy of a label that indicates the product was made in America.

Once a product has been certified, the grantee will not be required to recertify the product every time it is used. Grantee may refer back to the original certification or label for compliance.

Upon completion of construction, grantees will execute a HUD Build America, Buy America Self-Certification, attached as **Appendix L**, certifying and affirming the requirements of BABA have been met.

BABA Waivers for HUD Programs

The BAP applies to all federally funded infrastructure projects unless a project obtains a waiver. The BAP can be waived in very limited circumstances.

HUD has currently established four general waivers:

- ✓ **Exigent Circumstances Waiver** (Effective until November 23, 2027). The BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property.
- ✓ **De Minimis Waiver** (Effective until November 23, 2027). The BAP can be waived for a portion of the materials used in a project if the cost of those materials comprises no more than 5% of the total cost of the iron, steel, construction materials and manufactured products used in the project (not to exceed \$1 million) and there is a justification for the waiver, such as the materials are not domestically produced. "Total cost" does not include labor or other materials that are exempt from the BAP.
- ✓ **Small Grants Waiver** (Effective until November 23, 2027). The BAP can be waived for a project if the total project cost (including all sources of funding, both Federal, State and other) is less than the simplified acquisition threshold defined at [2 CFR 200.1](#) (currently \$250,000 or less). "Total project cost" means the total cost of development (all the work that goes into the project). In this case the BAP can be waived for the entire project.
- ✓ **Phased Implementation Waiver** (Effective until November 23, 2027). The Phased Implementation Waiver establishes a schedule for when the BAP will apply to HUD Programs. KCDBG must know which HUD funds are used in a project, the products used in a project, and the obligation date of the HUD funds to determine if the Phased Implementation Waiver applies. The "obligation date" is the date the grant agreement is signed by HUD.

The process for project-specific waiver requests shall begin with written communication from the grantee to KCDBG. The written communication must explain and document thorough rationale for the waiver request.

The KCDBG shall provide the grantee with written communication with the approval or denial of a general waiver request.

Phased Implementation Waiver

The Phased Implementation Waiver applies to projects based on the funding a project receives. KCDBG will not require a request for waiver in these situations and will inform whether BABA applies to their project.

Exigent Circumstances Waiver

For Exigent Circumstances Waivers KCDBG will approve a request for a waiver if there is an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community. You should complete the General Waiver Form and provide the required information, as outlined in the Form. KCDBG will review the waiver, and either approve or deny the waiver based on the information presented.

Small Grant Waiver

For projects whose total project cost (including all sources of funding, materials and labor) is less than the simplified acquisition threshold (currently \$250,000) KCDBG will approve a Small Grants Waiver. Developers should complete the General Waiver Form and provide the required information, as outlined in the Form. KCDBG will review the waiver, and either approve or deny the waiver based on the information presented.

De Minimis Waiver

- ✓ Responsible for: (1) providing KCDBG with an estimate of the total cost of the iron, steel, construction materials and manufactured products to be used in the project; and (2) calculating the 5% De Minimis figure.
- ✓ Must complete the General Waiver Form, and provide the required information, as outlined in the Form. KCDBG will review the waiver, and either approve or deny the waiver based on the information presented.
- ✓ Any De Minimis Waiver that is granted will require reconciliation of the products excluded from the BAP prior to PLC.
- ✓ If exceeds 5% of the total cost of iron, steel, construction materials and manufactured products, will be in non-compliance.
- ✓ Prior to and during construction it will be required to designate De Minimis products on the Construction Materials Spreadsheet that is submitted to KCDBG. Once a product is designated as De Minimis on a submitted Construction Materials Spreadsheet, that designation cannot be changed.

If any of the general waivers apply, KCDBG may waive the BAP for a project or a portion of a project. No formal request to HUD is needed to use these waivers. KCDBG is responsible for maintaining documentation that demonstrates the applicability of the waiver to a project, consistent with the BABA requirements.

HUD Project-Specific Waivers

In addition to the HUD General Waivers, project-specific waivers may be available for projects where the BAP would otherwise apply. If applying for project-specific waivers, the request must be submitted to KCDBG for their review. Then KCDBG will submit the request onto HUD for their consideration. HUD will review project-specific waivers on a case-by-case basis. There are currently three project-specific waivers available:

1. Public Interest

2. Nonavailability

3. Unreasonable Cost

It should be noted that project/product-specific waivers cannot be approved retroactively for items that have already been purchased or incorporated into a project. If a waiver is necessary, it must be obtained prior to the purchase of the product.

Public Interest Waiver

Requirements: A Public Interest Waiver may be available when apply the BAP would be inconsistent with the public interest.

Applying for a Waiver: When applying for a waiver the waiver should explain how waiving the BAP for the project or product serves the public interest and it should demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project. Grantees must submit Public Interest Waiver Form to KCDBG for approval.

Nonavailability Waiver

Requirements: A Nonavailability Waiver may be available when a particular iron or steel product, construction material, or manufactured product is not produced in the United States in sufficient quantities or of a satisfactory quality.

Research: Grantee must first contact the local [National Institute of Standards and Technology \(“NIST”\)](#) to utilize the available Manufacturing Extension Partnership (“MEP”). MEP is supposed to assist in finding an American supplier for product. Be advised that this process is likely to exceed 45 days per product. If no American product or supplier can be sourced, the process to request a project-specific waiver may continue.

Applying for a Waiver: When applying for a waiver the waiver should demonstrate that the grantee has conducted market research and adequately considered qualified alternative items and describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers. Grantees must submit a complete a Build America Buy America Waiver Request (OMB No: 2511-0002) to KCDBG for approval. (**Appendix G**)

Unreasonable Cost Waiver

Requirements: An Unreasonable Cost waiver may be available when applying the BAP will increase the total project cost by more than 25%. “Total project cost” means the total cost of development (all the work that goes into the project).

Research: Grantee must first contact the local [National Institute of Standards and Technology \(“NIST”\)](#) to utilize the available Manufacturing Extension Partnership (“MEP”). MEP is supposed to assist in finding an American supplier for product. Be advised that this process is likely to exceed 45 days per product. If no American product or supplier can be sourced, the process to request a project-specific waiver may continue.

Applying for a Waiver: When applying for a waiver the waiver should demonstrate that applying the BAP increases the total project cost by more than 25%, determine the additional cost of BAP-compliant products, determine the dollar amount to be waived, and demonstrate that no domestic alternatives are available within the project budget.

Be advised, the grantee shall likely need to timely provide additional information as requested by HUD and/or OMB during the review process to proceed with public comment in the Federal Register and final approval from the Made in America Office (MIAO).

KCDBG Provisions

The bid package must also include all KCDBG-related provisions and the grantee's terms and conditions. The following provisions for KCDBG-assisted projects must be included, as applicable.

- ✓ Bonding and Insurance Requirements Clause (Kentucky state law for contracts over \$25,000 and 2 CFR 200 Omni Circular if over \$100,000);
- ✓ Conflict of Interest;
- ✓ Certification of Compliance with Air and Water Acts (if over \$100,000);
- ✓ Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition);
- ✓ Energy Efficiency; and
- ✓ Access to Records/Maintenance of Records.

Cost and Pricing Format

The bid package must include cost and pricing formats. Generally, street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum. For unit cost contracts, the bid specifications should delineate each type of item, estimating quantity, unit price, and estimated total cost. All bid packages should indicate that the grantee can reject any and all bids received.

Attorney Review

Finally, the bid package should be reviewed in its entirety by the grantee's attorney to ensure compliance with applicable federal, state and city/county laws.

Procurement Requirements

Once the bid document is prepared, it is time to advertise for construction bids. Refer to Chapter 4: Procurement for specific instructions on how to proceed with the bidding process.

Chapter 4: Procurement

Section 6-D. Pre-Construction Requirements

Pre-construction Conferences

Before any work is performed by a contractor, DLG highly recommends that the grantee, the grant administrator, the engineer or architect, and any other technical advisors to the grantee conduct a pre-construction conference with the contractor to explain contractual requirements and performance schedules. Though no longer required in order to comply with federal labor standards, this conference reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the contractor and the grantee.

The grantee should prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. (See Attachment 6-4: Outline of a Pre-construction Conference.) A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. The grantee should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Items that should be covered at the pre-construction conference include, but are not limited to:

- ✓ Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
 - DLG has prepared a list of Commonly Asked Questions Concerning Equal Opportunity (provided as Attachment 6-5), which should be distributed and discussed.
 - At this time, the grantee should correct any outstanding deficiencies, such as securing signed Section 3 Plans and Certifications of Compliance.
 - Obtain the contractor's Federal Identification Number. This must be a Data Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).
- ✓ Have the contractor complete Attachment 6-6: Contractor Employee Breakdown Form, listing each employee expected to work on the project by race, sex, job classification, and salary/wage rate. This form can then be used to cross check against future employment for the project to determine if minority and female hiring goals are being achieved.
- ✓ Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.
- ✓ Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact DLG immediately.
- ✓ Explain that employee interviews will be conducted during the project.
- ✓ Emphasize that both a copy of the wage rate decision and the wage rate poster must be posted at the job site.
- ✓ Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the state certification of his/her program.
- ✓ If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law. If state wage rates apply to the contract, explain that workers

Attachment 6-4:
Outline of a Pre-Construction
Conference

Contractor's Guide to Prevailing
Wage Requirements for Federally-
Assisted Construction Projects:
[http://portal.hud.gov/hudportal/H
UD?src=/program_offices/adminis
tration/hudclips/guidebooks/4812](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4812)
[LR](#)

Attachment 6-6:
Contractor Employee Breakdown
Form

must also be paid overtime if they work more than eight hours in a day or 40 hours in a week, unless signed agreements have been obtained from each employee. (See Section 3 of this chapter for more information.)

- ✓ Indicate that **failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) makes the contractor liable for not only restitution but also liquidated damages of \$25 per day for every day each worker that exceeded 40 hours a week without being paid time and a half.** Grantees should contact their DLG Program Advisor for assistance if a violation occurs.
- ✓ **Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee.** An unidentified payroll deduction is a method used by unethical contractors to get their workers to “kickback” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.
- ✓ Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.
- ✓ Provide contractor with posters for the site, such as “Davis Bacon Act,” “Notice to All Employees Working on Federal or Federally Financed Construction Projects,” “Safety and Health Protection on the Job,” and “Equal Employment Opportunity is the Law.” These posters are referenced in the text box to the right. Inform the contractor that it is his/her responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions. (See Chapter 5, Attachment 5-4.)
- ✓ Provide the contractor with a copy of the “Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.” This guide can be downloaded at: <https://www.hud.gov/sites/documents/4812-LRGUIDE.PDF>.
- ✓ Provide handouts explaining everything covered and obtain the contractor’s signature to document receipt.

Attachment 6-7 (a-d):
Contracting Posters
Also available online at
<https://www.dol.gov/general/topics/posters>

The grantee should also describe the compliance monitoring that will be conducted during the project and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

Following the pre-construction conference, the grantee should prepare and maintain a pre-construction conference report. This report is meant to record the minutes of the meeting. A sample Pre-construction Report Format is provided as Attachment 6-8.

Attachment 6-8:
Pre-Construction Report Format

Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, issue a Notice to Proceed to each prime contractor to begin performance of the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The Notice to Proceed must include the name of the contractor and the amount of the contract. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents. A sample Notice to Proceed is provided as Attachment 6-9. **The Notice to Proceed must also be sent to DLG following execution.**

Attachment 6-9:
Notice to Proceed

Contract File Review

The grantee should also review each contract file and associated compliance file to make sure documentation is complete at the time of contract award. The following list of Construction Contract file requirements identifies the items that should already be located in the contract file. Note that Section 3 of this chapter provided a listing of labor standards and equal opportunity requirements, so they are not repeated below but must be reviewed as well.

- ✓ Preliminary design and cost estimates;
- ✓ Final design documents and cost estimates;
- ✓ Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
- ✓ Bid documents;
- ✓ Approval of bid documents by authorities having jurisdiction over the project, as appropriate;
- ✓ Tear sheet or affidavit documenting the advertisement for bids;
- ✓ Addenda, if any, and evidence of timely distribution to plan holders;
- ✓ Signed minutes of public bid opening;
- ✓ Certified tabulation of bids;
- ✓ Recommendation for Award;
- ✓ Notice of Contract Award/Council or Fiscal Court Approval;
- ✓ Recommended pre-construction conference report;
- ✓ Executed contract and subcontract documents;
- ✓ Certification of Insurance/Bonding; and
- ✓ Notice to Proceed.

Section 6-E. Payroll Review Requirements

Once construction is underway, the general contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations.

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance) and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. See Attachment 6-10: Payroll Falsification Indicators, for HUD guidance on detecting falsification through frequent payroll review and interview comparison.

Attachment 6-10:
Payroll Falsification Indicators

Certified payroll reports must be submitted by the contractor to the grantee within seven to eleven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided as Attachment 6-11. Note that an employee's full social security number and address are not to be included on these certified payroll reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. And a Statement of Compliance must accompany each payroll submission.

Attachment 6-11: Payroll
Form/Statement of Compliance
(WH 347)

Payroll reports must be reviewed by the grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the grantee to indicate that they have been reviewed.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- ✓ The correct classification of workers;
- ✓ A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- ✓ A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- ✓ Review of deductions for any non-permissible deductions; and
- ✓ The Statement of Compliance (part of the payroll form in Attachment 6-11) has been completed and signed by the owner or an officer of the firm.

HUD Handbook 1344 is a good resource for labor standards information.
https://www.hud.gov/program_of_fices/administration/hudclips/handbooks/sech/13441.

Any discrepancies and/or falsification indicators must be reported to DLG, along with the steps being taken by the grantee to resolve the discrepancies. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Grantees are required to submit a Section 5.7 Report (provided as Attachment 6-16 including instructions) whenever an employer is found to have underpaid its employees by \$1,000 or more. Grantees should contact their DLG Program Advisor for assistance if a violation occurs.

Attachment 6-16 (a – b):
Instructions and Section 5.7
Enforcement Report

Caution:  Owner-operators of power equipment, like self-employed mechanics, may not submit their own payrolls certifying to the payment of their own wages *BUT* must instead be included on the responsible contractor's certified payroll report.

Section 6-F. Construction Management Requirements

General

During construction, the grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this Chapter. In addition to payroll reviews and interviews, the grantee is responsible for ensuring proper construction management. This role may be fulfilled by the architect/engineer and, if so, should be included in the scope of services for that professional services contract. Construction management must include on-site inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications, as well as quantity and quality control.

Note that written inspection reports must accompany any contractor's request for partial payment. It is also strongly recommended that monthly progress meetings be held to allow the grantee, engineer, grant administrator, and funding agencies to review the status of the project, resolve problems, and review requests for payment.

Labor Standards Requirements

Construction management requirements include conducting job site interviews with workers using Attachment 6-12: Record of Employee Interview Form.

Attachment 6-12:
Record of Employee Interview
Form (HUD Form 11)

The grantee must conduct interviews using the representative sampling technique and the interviews should include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance. At least 10 percent of the workers on-site, and at least one in each job classification working at the site, should be interviewed.

The grantee should ensure the following actions are performed:

- ✓ DLG recommends that interviews be conducted at least once during the course of each phase of construction on each project.
- ✓ Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage decision, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.

- ✓ Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.
- ✓ A fully completed and signed Record of Employee Interview form is maintained in the contract file.

Interview Protocols

The following guidelines should be observed by persons conducting job site interviews:

- ✓ The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process).
 - ✓ The interviewer should see that the wage determination and other required posters are properly displayed.
 - ✓ The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and subcontractors should be interviewed. Administrators may choose to complete the Project Wage Rate Sheet found in Attachment 6-7d. This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.
- Attachment 6-7d:
Project Wage Rate Sheet
(HUD Form 4720)
- ✓ To initiate the interview, the authorized person shall:
 - Properly identify himself/herself;
 - Clearly state the purpose of interview; and
 - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
 - ✓ When conducting employee interviews, the interviewer should pay particular attention to:
 - The employee's full name.
 - The employee's permanent mailing address.
 - ✓ The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and no other work.
 - The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
 - The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
 - If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - Ask for any records.
 - Arrange to re-interview the employee.
 - Enter the worker's statement of his/her classification.
 - Observe duties and tools used:
 - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.

-
- If there are discrepancies, detailed statements are necessary.
 - Enter any comments necessary.
 - Enter date interview took place.
 - ✓ If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731) using Attachment 6-13.
 - ✓ The payroll examiner must compare information on the Record of Employee Interview form with the certified payroll submission:
 - If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form.
 - If discrepancies do appear, appropriate action should be initiated.
 - ✓ When necessary, action has been completed, the results must be noted on the interview form.

Attachment 6-13:
Federal Labor Standards
Complaint Intake Form
(HUD Form 4731)

Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project, including wage restitution, must be reported in a certified payroll report.

Notification to the Prime Contractor

The contract administrator will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will 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. If wage violations are not corrected within 30 days after notification to the prime contractor, the recipient may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the contract administrator 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.

Correction Payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or payrolls for a specified beginning date through a specified ending date). The correction payroll will list:

- ✓ Each employee to whom restitution is due and their work classification,

- ✓ The total number of work hours,
- ✓ 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 properly signed Statement of Compliance must be attached to the correction certified payroll.

- ✓ Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment.

Review of Corrected Certified Payroll

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

The contractor is required to provide the employee with a Documentation of Restitution Employee Release Form (Attachment 6-17) to verify that the employee is in agreement with the amount of restitution and relinquishes all claims of underpayment.

Attachment 6-17:
Documentation of Restitution
Employee Release Form

Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. The grantee must continue to attempt to locate the unfound employee(s) for three years after completion of the project. After three years, any amount remaining in the account should be credited and/or forwarded to DLG.

Section 5.7 Enforcement Report

The U.S. Department of Labor Regulations require all federal agencies to submit a report to the Secretary of Labor regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of \$1,000 or where there is reason to believe that the violations were willful. The instructions for filling out the form and the form itself can be found in Attachment 6-16a and b.

Attachment 6-16 (a – b):
Instructions and Section 5.7
Enforcement Report

Liquidated Damages for Overtime Violations

As mentioned previously, failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act (more than 40 hours per week) or, if applicable, KRS Chapter 337 (more than eight hours or, if a written agreement, 10 hours per day) makes the contractor liable for liquidated damages of \$2 per day for every day each worker exceeded 40 hours a week without being paid time and a half. Grantees should contact their DLG Program Advisor for assistance if a violation occurs.

Semi-Annual Labor Standards Enforcement Reports

Grantees must submit Semi-Annual Labor Standards Enforcement Reports (HUD 4710 and 4710i) twice a year. The first report should include all contracts subject to Davis-Bacon and related acts awarded between April 1 and September 30. It is due no later than September 15. The second semi-annual report should include all contracts subject to Davis-Bacon and related acts awarded between October 1 and March 31. It is due not later than March 15. If no contracts were awarded, please fill in the agency name (city or county), the period covered and mark “not applicable” at the top of the form. The form and instructions can be found in Attachments 6-15a and 6-15b. Grantees should submit the report via email to DLG.

Labor Relations and Related Forms
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud4

Attachment 6-15 (a – b):
Instructions and Semi-Annual
Labor Standards Enforcement
Report (HUD 4710)

Equal Opportunity Requirements

The grantee must also visit the construction site to ensure the project site is posted with the required Equal Employment Opportunity is the Law poster (provided in Attachment 6-7b). These visits can be done in conjunction with employee interviews for labor standards compliance. The results of each visit should be noted in the Equal Opportunity Compliance file.

Attachment 6-7b:
“Equal Employment Opportunity is
the Law” Poster

In addition, the grantee should interview each contractor during the course of work to determine compliance with the Standard KCDBG-assisted Equal Employment Opportunity Construction Contract Specifications contained in the contract.

Equal Opportunity Compliance Files

Equal opportunity compliance files must be maintained for each contractor on the project. At project completion, each equal opportunity compliance file should contain the following items:

- ✓ Verification of contractor/subcontractor eligibility concerning Section 3 and equal opportunity, as well as a written Section 3 Plan if over \$200,000 (or cross reference the contract file that includes fully executed certifications and Section 3 Plan).
- ✓ Contractor eligibility, cross-referenced from Labor Standards Compliance file.
- ✓ Correspondence concerning contractor equal opportunity compliance.
- ✓ Site visit reports indicating equal opportunity posting on site and contractor compliance with equal opportunity provisions, cross-referenced from Labor Standards Compliance file.

- ✓ Equal opportunity problems uncovered in employee interviews and evidence of resolution.
- ✓ Evidence of interview with contractor concerning equal opportunity compliance.
- ✓ Contractor Employee Breakdown Form (Attachment 6-6).

Attachment 6-6:
Sample Contractor Employee
Breakdown Form

Section 6-G. Review and Payments

Progress Payments

Upon agreement as to quantities of work completed, a contractor may submit requests for partial or progress payments. Written inspection reports must accompany the contractor's requests for partial payment. Inspection reports, copies of field measurement notes, and test results used to verify contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of certificates for partial payment and necessary documentation, the grantee must check equal opportunity and labor standards compliance files to ensure that:

- ✓ All weekly payrolls and Statements of Compliance have been received, reviewed, and any discrepancies resolved; and
- ✓ Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

Retainage from Progress Payments

Although retainage is not a requirement, many grantees have found it helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems. See below for information on how retainage is addressed in the Final Payment.

Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders are permissible where the cumulative cost of all such orders does not exceed 20 percent of the original contract price and these changes do not constitute a major alteration of the original scope of work. If the proposed change orders cumulatively exceed 20 percent of the original contract, the grantee must contact DLG for prior approval.

Each change order must be accompanied by a supporting statement that describes why the change is necessary, cost estimates, and any needed plans and specifications. The grantee must approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum and cannot be issued after final payment.

Final Payment

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The grantee or the architect/engineer should make the final inspection and prepare a written report of the inspection prior to the issuance of a final certificate of payment. Before making final payment (less 10 percent retainage), the grantee must ensure that:

-
- ✓ All weekly payrolls and Statements of Compliance have been received, reviewed, and discrepancies have been resolved;
 - ✓ Any underpayments of wages and/or liquidated damages have been appropriately handled and documented;
 - ✓ All discrepancies identified through job site interviews have been resolved;
 - ✓ All other required equal opportunity and labor standards provisions have been satisfied;
 - ✓ All contract submissions have been received;
 - ✓ All claims and disputes involving the contractor have been resolved;
 - ✓ All files are complete; and
 - ✓ As-built plans have been filed.

If the inspection is satisfactory, the grantee can then issue acceptance of work and final payment, less a 10 percent retainage.

Retainage from Final Payment

Within 30 days from the filing of the acceptance of the work and upon submission of a clear lien certificate by the contractor, the grantee should release the 10 percent retainage that has been withheld from each progress and final payment to the contractor (at the grantee's option).

If any claims or liens remain after the 30-day period, the grantee must take appropriate action for the disposition of the retainage and all claims against the bonds in accordance with state law.

Section 6-H. Documentation Requirements

The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) or form(s) to which that information pertains is not unduly exposed to financial or personal risk. The standard compliance documents must be preserved and retained for a period of five years following the completion of the work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure.

- ✓ Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);
- ✓ Do not include full Social Security Numbers or other sensitive personal identifying information on documents and records;
- ✓ Do not disclose the identity of any informant unless it is necessary and only if authorized by the informant; and
- ✓ Dispose of documents and records containing sensitive information responsibly.

At project completion, in addition to the equal opportunity file requirements described in the sections above, each contract file should contain the following labor standards compliance items:

- ✓ Wage Decision(s);
- ✓ "Nine-Day Call" documentation (ensuring wage decision is still current);

- ✓ Copies of Contractor Certifications Concerning Labor Standards (or cross reference contract file that includes executed certifications);
- ✓ Tear sheet of Bid advertisement;
- ✓ Copies of all bid responses;
- ✓ Minutes of the bid opening;
- ✓ Verification of contractor/subcontractor eligibility;
- ✓ Notice of Award;
- ✓ Executed construction contract;
- ✓ Pre-construction Conference Report;
- ✓ Notice to Proceed;
- ✓ Contractor Employee Breakdown Report;
- ✓ Weekly payrolls, Statements of Compliance, and evidence that payrolls were reviewed;
- ✓ Kentucky Prevailing Wage Overtime Agreement
- ✓ Employee interviews;
- ✓ Site visit reports;
- ✓ Engineering inspection reports;
- ✓ Evidence that the on-site interviews were checked against payrolls and the applicable wage rate decision;
- ✓ Evidence of restitution/resolution of identified discrepancies;
- ✓ Documentation of Restitution Employee Release Form (see Attachment 6-18 for a sample);
- ✓ Complaints from workers, if any, and actions taken;
- ✓ Liquidated damages assessed, appeals, if any, and outcome;
- ✓ Notice of Completion/Final Inspection;
- ✓ Construction Oversight Checklist (see Attachment 6-14 for a sample);
- ✓ Semi-Annual Labor Standards Enforcement Reports; and
- ✓ Section 5.7 Enforcement Report (see Attachment 6-16b)

Attachment 6-14:
Sample Construction Oversight
Checklist

Attachment 6-16b:
Section 5.7 Enforcement Report