

## Chapter 6 – Construction and Labor

### Words to Know:

**Certified Payrolls** – Payroll forms signed by the prime contractor certifying that the wages and fringe benefits indicated were paid to the workers listed. If CDBG reimbursement is sought for construction, copies of the certified payrolls associated with the contractor's application for payment (pay app) must be submitted with the CDBG Request for Reimbursement and must include notations demonstrating that the Grantee compared them to the applicable Davis-Bacon wage determination. A copy of the WH247 Payroll form is available in our "Labor Standards Officer" toolkit.

**Davis-Bacon Act** – A federal law requiring that prevailing wage rates set by the U.S. Department of Labor are paid to all laborers and mechanics working on CDBG-funded construction projects totaling over \$2,000.

**Davis-Bacon Wage Determination** – A listing of wage rates and fringe benefits determined by the U.S. Department of Labor to be prevailing for each work classification for a given area and type of construction. They can be searched and downloaded [here](#).

**Full and Open Competition** – HUD requires all project-related acquisitions must be made using full and open competition, meaning all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. Full and open competition is the preferred form of contracting and includes contracting by sealed bids, negotiation, and other procedures. For detailed information regarding procurement, please refer to Chapter 3.

**HUD-4010** – A HUD form that sets forth the Federal Labor Standards Provisions that must be included in the CDBG construction bid documents and included in contracts.

**Labor Standards Officer** – The person designated by the CDBG Grantee who is responsible for ensuring compliance with CDBG labor standards requirements. For more detailed information on the responsibilities of the LSO on a CDBG-funded project, please review the "Construction and Labor" toolkit posted on the CDBG Resource website.

**Section 3** – A provision of the HUD Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that CDBG Grantees, to the greatest extent feasible, provide job

training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

**System for Award Management** – A free, [online database](#) administered by the U.S.

Government on which all contractors working on CDBG projects must actively maintain registration.

**Unique Entity ID** – A 12-character alphanumeric identifier used by the federal government to identify entities.

**WH 347 Payroll Form** – the HUD recommended payroll form. If a construction contractor does not use the WH-347 payroll form, the form used must contain identical information.

## Overview

Montana's CDBG-funded construction projects are subject to CDBG requirements, state laws, and federal laws related to construction procurement, civil rights, and labor standards. The processes and requirements described in this chapter will help CDBG Grantees promote free and open competition in the selection of their contractors and guarantee fair compensation for workers. CDBG Grantees and the construction contractors working on CDBG projects must document compliance with CDBG-required labor standards, civil rights, and procurement requirements.

## Davis-Bacon Wages

Compliance with the Davis-Bacon Act and Davis-Bacon Related Acts is important because it guarantees fair compensation for all laborers and mechanics performing construction work on CDBG construction projects totaling more than \$2,000. DBA applies to non-residential construction work including alteration and/or repair, including, painting, and decorating of public buildings or works. DBA applies to residential construction only when it involves properties with eight (8) or more units. The wages established in the applicable DBA wage determination found at [SAM's website](#) are minimums and in no way prohibit contractors from paying workers more than the minimum set within the applicable DBA wage determination. If the Montana Prevailing Wage is higher than the DBA wage for the same work classification, contractors are required to pay the higher of the two. Links to more information on DBA,

DBRA, and the other federal labor standards acts applicable to CDBG construction projects are provided in the “Construction and Labor” toolkit.

## **Steps to Ensuring Compliance with Construction and Labor Requirements**

1. Select architectural and/or engineering services
2. Submit draft bid documents for CDBG review before advertising
3. Publish bid advertisement with Section 3 Notice and perform direct DBE/MBE/WBE outreach
4. Check DBA wage determination 10 days prior to bid opening
5. Open bids
6. Compile bid tabs and send to Commerce with request for state and federal debarment check on lowest, responsible bidder
7. Issue Notice of Award
8. Execute construction contract and send a copy of executed Project Manual to Commerce
9. Hold Pre-Construction Meeting at which LSO presents civil rights and labor standards requirements
10. Submit list of subcontractor UEI numbers to Commerce for state and federal debarment checks
11. Confirm whether DBA wage determination includes classifications for every type of work to be performed on the construction
12. Share draft project sign for Commerce approval
13. Issue Notice to Proceed
14. Conduct employee interviews and examine payrolls to ensure DBA compliance
15. Submit change orders of \$5,000 or more for Commerce review for eligibility and alignment with the project’s scope of work approval prior to execution

## Select Architectural and/or Engineering Services

- a) Grantees must perform direct outreach to DBEs and perform Section 3 outreach with every procurement action taken on the project. Please review the “Section 3/DBE/MBE/WBE” toolkit on the CDBG website for direct guidance.
- b) If a Grantee chooses to procure a grant administrator, the opportunity must be made available to all firms providing grant administration services, not just A/E firms.
- c) Follow Montana law for the procurement of professional services and grant administration services. Please review Chapter 3 for additional guidance.

## Submit Draft Bid Documents for CDBG Review Before Advertising

- a) Bid package templates are available with Engineers Joint Contract Documents Committee and American Institute of Architects. Other templates may be used if they include the required language in accordance with state and federal law
- b) Must include CDBG Supplemental General Conditions (refer to the “Procurement” toolkit) and HUD-4010 Federal Labor Standards (refer to the “Construction and Labor” toolkit). Provisions found in Section 0900 of the EJCDC and/or AIA Funding Agency Special Provisions for Montana Public Facilities Projects (same as bid package templates listed in Step 2a)
- c) Must include copies of both the Davis-Bacon and Montana prevailing wage determinations and include language that the contractor is required to pay the higher of the two
- d) Invitation to Bid must include a Section 3 notice
- e) Ensure that all products and equipment are subject to ‘or approved equal’ language, or something similar, in order to ensure free and open competition
- f) CDBG cannot reimburse for cost plus a percentage of cost
- g) Ensure that the advertising timeframes follow state and local advertising requirements (reach out to your local government officials to confirm local advertising requirements)

## Publish Bid Advertisement

- a) Before publishing the bid advertisement, Grantees must have documentation demonstrating completion of environmental review and authorized land use. Completion can include:
  - i. AUGF (form HUD-7015.16) – Commerce will provide the Grantee an executed 7015.16 form to certify the completion of the appropriate environmental review under 24 CFR Part 58.
  - ii. Site title opinion or executed land-use agreements (i.e., easement, lease, purchase) with documentation demonstrating compliance with the URA. For guidance on URA compliance, please see Chapter 4 and utilize the “URA and Public and Community Facilities” toolkit available on our website.
- b) Perform direct outreach to DBEs.
  - i. Please consult the “Section 3/DBE/MBE/WBE” toolkit on our website.
  - ii. Direct outreach to DBEs must be performed in tandem with bid advertising.
  - iii. DBE outreach documentation must be submitted to Commerce and retained in the Grantee’s project file.
  - iiii. Perform direct outreach to Section 3 persons and businesses.
- c) Please consult the “Section 3 and DBE/MBE/WBE” toolkit on our website for guidance.

## Check DBA Wage Determination 10 Days Prior to Bid Opening

- a) Check the DBA wage determination on [SAM's website](#).
- b) The DBA wage determination active on the bid opening day “locks in” the minimum wages that must be paid to laborers and mechanics under the resulting construction contract. See step 7 and 13 for exceptions to that rule.
- c) If a modified determination is issued while the bid opportunity is being advertised, please notify all bidders that they must utilize the updated version. However, if a modification in the DB wage determination occurs within 10 days of bid opening, the modified determination does not have to be utilized.

## Open Bids

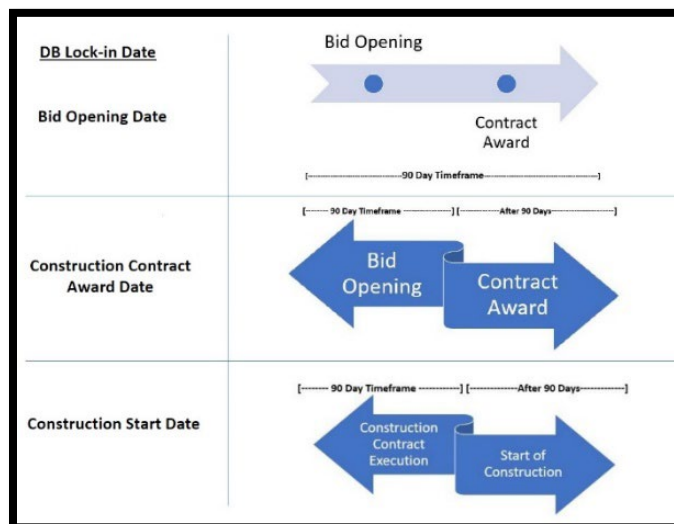
### Compile Bid Tabs and Submit to Commerce with Request for a State and Federal Debarment Check on Lowest Responsive, Responsible Bidder

- Please provide the name, address, and UEI for the contractor with the lowest responsive, responsible bid. The contractor must have a UEI and maintain an active registration in the [SAM](#), a free, online database administered by the U.S. Government.

### Issue Notice of Award

- If the construction contract is not awarded within ninety (90) days of bid opening, the DBA wage determination active at the time of the Notice of Award must be used by the contractor.

#### *DBA Lock-In Date*



Execute Construction Contract and Send Electronic Copy of Executed Project Manual to Project Specialist Via the File Transfer Service.

## Hold Preconstruction Conference

The Grantee, LSO, grant administrator, design professionals, and project funding agencies participate in a preconstruction conference with the prime contractor and all the subcontractors before the start of construction. At this time, the prime and subs are advised of the overall management of the project including the civil rights and labor standards provisions.

The preconstruction conference is a critical opportunity for the LSO to inform the prime contractor and subcontractors of their labor standards and civil rights obligations, and to establish the LSO as the point of contact on labor standards and civil rights compliance throughout construction of the project. The LSO should be prepared to present the applicable civil rights and labor standards requirements at the meeting to ensure compliance with all applicable civil rights and labor standards provisions. The preconstruction conference should provide specific information and address all questions related to expectations, communications, and implementation so the LSO can ensure compliance at the work site and with certified payrolls.

The Grantee must document the contractor's and subcontractors' attendance, take minutes, and obtain a signed receipt of required materials from the prime contractor.

Please consult the "Labor Standards Officer" toolkit available on our website for materials and specific guidance. The "Labor Standards Officer" toolkit contains a script that may be read aloud at the preconstruction meeting to meet labor standards and civil rights requirements.

## Send List of All Subcontractors' UEI Numbers to Commerce for State and Federal Debarment Checks.

The prime contractor must acquire a UEI and maintain an active registration in the SAM database. The subcontractor selected by the prime contractor to work on the project do not

need to be registered in SAM but do need to obtain a UEI. To determine if an entity requires a UEI and active registration and being in good standing with SAM, see the “Labor Standards Officer” toolkit.

### Confirm with CDBG Project Specialist Whether DBA Wage Determination Includes Classifications for All Types of Work to be Performed on the Construction Project.

### Share Draft Project Sign for Commerce Approval.

The project sign must include the Equal Housing Opportunity logo, the Commerce logo, and other project details such as the total project cost and amounts invested by each funding source (as required by other project funders).

### Issue Notice to Proceed.

If the construction does not begin within 90 days of the construction contract being signed, the contractor must use the DBA wage determination that is active at the time construction begins.

### Conduct Employee Interviews and Examine Weekly Payrolls to Ensure DBA Compliance.

During construction, the designated LSO, or their designee, will conduct monthly interviews with construction laborers and mechanics representing each wage classification on the project. The LSO must also ensure that the required labor standards posters and wage determinations are posted and accessible at the project site. The contractor or subcontractor is required to allow the LSO access to the site and workers for the purpose of completing interviews, and the interviews must be kept confidential from the contractor. The LSO must review payrolls weekly for correctness and maintain records documenting weekly reviews.



The LSO will resolve any labor standards violations promptly and maintain a detailed record of all administrative and enforcement activities with respect to labor standards.

Please consult the “Labor Standards Officer” toolkit available on our website for materials and guidance.

### **Submit Change Orders of \$5,000 or More for Commerce Review Prior to Execution.**

Commerce will review the change order to ensure it does not impact the approved scope of work. If CDBG funds are being used to pay for the change order, Commerce will review to ensure it is for a CDBG eligible expense.

### **Schedule CDBG Project File Monitoring and Construction Site Visit with Commerce Project Specialist.**

### **Issue Certificate of Substantial Completion.**

## **Grantees Must Submit to Commerce the Following Construction Procurement Documents.**

- ☐ DEQ comments and approval letter
- ☐ Affidavits of publication for bid advertisement
- ☐ Documentation demonstrating direct DBE outreach
- ☐ Addendums to the bid documents (if any)
- ☐ Executed agreement forms, including bid bond, performance bond, payment bond, Notice of Award, Notice to Proceed
- ☐ Completed environmental permits
- ☐ Certified bid tabs

- ❑ Site title opinion and/or URA documentation if land purchase or easements are involved
- ❑ Preconstruction meeting agenda and minutes
- ❑ Signed Contractor's Receipt of Required Materials
- ❑ Name, address, and UEI number for prime contractor
- ❑ List of all Davis-Bacon wage classifications that will be used based on the applicable Davis Bacon wage determination
- ❑ Contractor Reporting Form