

CHAPTER 6 -- LABOR STANDARDS

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CHAPTER 6

LABOR STANDARDS

I. OVERVIEW

This chapter provides an overview of federal and State requirements which govern the wages and working conditions for laborers and mechanics employed under construction contracts funded in whole or in part by CDBG funds.

- **Compliance with labor standards provisions by the CDBG recipient is a condition for receipt of CDBG assistance.**
- **Section III (Grantee Responsibilities) in this chapter describes responsibilities of the grantee to ensure compliance with federal labor standards.**
 - **These requirements include:**
 - (a) Designating a project labor standards officer -- an individual representing the CDBG grantee -- before the beginning of construction whose job will be to ensure compliance with all applicable labor standards provisions and to act as liaison with the contractor and the Montana Department of Commerce/MDOC (Step 1);
 - (b) Ensuring that all construction bid documents, contracts and subcontracts contain applicable federal labor standards provisions (federal Davis-Bacon wage rates and other worker protections provisions) and the current federal wage determination(s), and that all contractors are eligible to receive federal funds in payment for work on your project (Steps 2, 3, 4, and 5);
 - (c) Conducting a pre-construction conference to inform all contractors and subcontractors of their labor standards and civil rights and other obligations (Step 6);
 - (d) Conducting interviews of the selected construction contractors' employee and checking that labor standards posters and wage determinations are posted and accessible at the project site (Step 7);
 - (e) Weekly reviewing weekly payrolls for correctness (Step 7) and maintaining records that documenting that that the weekly reviews have been conducted;
 - (f) Resolving all labor standards violations promptly (Step 8); and
 - (g) Maintaining detailed records to document all administrative and enforcement activities with respect to labor standards (Step 9).

II. APPLICABLE REQUIREMENTS

The following laws provide the legislative authority for the requirements related to workers' wages and hours on projects receiving federal assistance.

- **HUD Form 4010** (included as **Exhibit 6-A** of this CDBG Manual) provides a summary of the federal labor standards provisions which must be complied with.
 - **All construction contracts entered into by CDBG recipients (or their subrecipients) which will be paid in whole or in part with CDBG funds, must contain a copy of HUD Form 4010 (Exhibit 6-A) or its equivalent.**

- A copy of **HUD Handbook 1344.1, (REV. 2), Federal Labor Standards Compliance in Housing and Community Development Programs**, is available to each public facilities grantee and additional copies are available upon request from CDBG staff.
 - It is available on the internet at:
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441 Any community that will be involved in construction activities as part of its CDBG project should review it and retain a copy for its files.
 - This handbook provides detailed guidance for achieving compliance with the federal labor standards provisions discussed in this chapter.
- In addition to compliance with **labor standards**, grantees must comply with applicable **civil rights requirements** as explained in Chapter 5.

A. FEDERAL LABOR STANDARDS REQUIREMENTS

1. Contract Work Hours and Safety Standards Act (CWHSSA)

(40 USC 327-330), as supplemented by U.S. Department of Labor regulations 29 CFR, Part 5), available on-line at <http://www.dol.gov/compliance/laws/comp-cwhssa.htm>

- This act was enacted in 1962 and consolidated a number of “eight hour” laws, some dating back to the 1890s, which provided for overtime pay after 8 hours a day on federal construction contracts. It also provided for overtime pay after 40 hours a week.
- CWHSSA requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 in a workweek.
 - Effective January 1, 1986 the daily (8-hour) overtime requirement was eliminated. Therefore, the Fair Labor Standards Act (FLSA) and CWHSSA requirements are the same. In situations where there are concurrent FLSA and CWHSSA violations, the back wages should be computed and reported under CWHSSA rather than FLSA. In addition to back wages for unpaid overtime hours, CWHSSA also requires an assessment of liquidated damages at the rate of \$10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation.
- The CWHSS Act applies to all federally assisted contracts in excess of \$100,000 for construction contracts.
- Under Section 103 of the CWHSS Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- Section 107 of the CWHSS Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety and health standards promulgated by the U.S. Secretary of Labor.

- CWHSSA has no job site limitation. If an employee performs part of the construction work at the job site and part of the work at a shop, the statute applies to all hours of the contract work.

2. **Copeland "Anti-Kickback" Act**, <http://www.dol.gov/compliance/laws/comp-copeland.htm> (18 USC 874), as supplemented in U.S. Department of Labor regulations (29 CFR 3, <http://www.gpo.gov/fdsys/pkg/CFR-2009-title29-vol1/content-detail.html>)

- The Copeland "Anti-Kickback" Act and implementing regulations in 29 CFR 3 collectively provide for the following three safeguards: prohibits "kickbacks" of wages and back wages; requires contractors on DBRA covered project to submit weekly a "statement of compliance" (i.e., that the contractor has paid the required wages); and regulates payroll deductions from wages.
- This Act prohibits any contractor or subcontractor from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he or she is rightfully entitled.
- 29 CFR 3.5 permits the following deductions from wages without the approval of the Secretary of Labor:
 - a. Deductions for social security or federal or state income tax withholding.
 - b. Deductions for bona fide prepayment of wages.
 - c. Deductions for court ordered payments.
 - d. Deductions for contributions to fringe benefit plans, provided that the deduction is not prohibited by law, that it is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.
 - e. Deductions for purchase of U.S. savings bonds when voluntarily authorized by the employee.
 - f. Deductions to repay loans or to purchase shares in a credit union.
 - g. Deductions voluntarily authorized for contributions to organizations such as the Red Cross, United Way, or similar charitable organizations.
 - h. Deductions to pay union initiation fees and membership dues, provided that a collective bargaining agreement provides for such deductions.
 - i. Deductions for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of FLSA.
 - j. Deductions for the cost of safety equipment purchased by the employee, if the equipment is not required by law to be furnished by the employer and if the cost on which the deduction is based does not exceed the actual cost to the employer.
- 29 CFR 3 requires contractors and subcontractors on federal Davis-Bacon covered construction projects to submit each week a "statement of compliance" certifying compliance with the Davis-Bacon Related Acts requirements. This "statement of compliance" is usually referred to as the certified payroll.

3. **Davis-Bacon Related Acts (DBRA)**, on-line at <http://www.dol.gov/whd/programs/dbra/> as amended (40 U.S.C. 276 to A-7), and as supplemented by U.S. Department of Labor regulations (29 CFR 5, on-line at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr5_main_02.tpl)

- Congress has extended Davis-Bacon prevailing wage requirements to other laws (related Acts) which provide federal assistance for construction through grants, loans, loan guarantees, or insurance rather than direct contracts for construction with federal agencies.
- Most of the related laws are listed in 29 CFR 5.1(a). They include by reference the requirements for payment of prevailing wages set in accordance with the Davis-Bacon Act. Many of the related Acts contain coverage criteria specific to projects funded under those statutes.
- A determination whether the Davis-Bacon prevailing wage provisions apply to all or a portion of an assisted project requires an analysis of the actual labor standards provision in the related Act.
 - For example, the labor standards provision of the Housing and Community Development Act of 1974 does not apply to the rehabilitation of residential property designed for fewer than 8 families.
 - Certain statutes require the payment of Davis-Bacon prevailing wage rates only to those portions of a construction project assisted with federal monies while other statutes – by virtue of the language of the labor standards provision – clearly require the payment of prevailing wage rates to all construction work on a project funded “in whole or in part” by federal monies.
- **The Act applies to construction contracts over \$2,000** and mandates that:
 - all laborers and mechanics be paid unconditionally and not less often than once a week,
 - without subsequent deduction or rebate on any account except "permissible" salary deductions,
 - the full amounts due at the time of payments, computed at wage rates not less than those contained in the appropriate Davis-Bacon wage determination issued by the U.S. Department of Labor.
 - Davis-Bacon wage rate webpage: <http://www.wdol.gov/>
 - Montana federal Davis-Bacon wage rates webpage:
<http://www.wdol.gov/wdol/scafiles/davisbacon/mt.html>
- CDBG grantees must include a copy of the current prevailing wage determination issued by the U.S. Department of Labor in each bid solicitation.
 - The bid document must state that the award of a contract is conditioned upon the acceptance of the wage determination.
 - The grantee must report all suspected or reported violations to MDOC.

Comment: Federal Davis-Bacon Wages in the HOME Program and in the CDBG Program

- Many projects funded by the Montana Department of Commerce include both **CDBG** funds and **HOME** (Home Investments Partnerships Program) funds.
- Even though HUD funds the **HOME** and **CDBG** programs, they are guided by different regulations and statutes.

MDOC HOME Program: <http://housing.mt.gov/HM/default.mcp>x

MDOC CDBG Program: <http://comdev.mt.gov/CDBG/default.mcp>x

HOME funds and payment of federal Davis-Bacon wages:

- In contrast to the CDBG program, Davis-Bacon is triggered when **HOME** funds are used to finance the **construction of new affordable housing with 12 or more units**. (See 24 CFR 92.354 for more details on the HOME program and Davis-Bacon.)
- **HOME**-assisted contracts for the **rehabilitation or new construction of eleven or less residential units are exempt** from Davis-Bacon requirements

CDBG funds and payment of federal Davis-Bacon wages:

- **CDBG**-assisted contracts for **construction of new housing** require compliance with the provision of the Davis-Bacon Act. According to Section 110(a) of the Housing and Community Development Act (HCDA) of 1974 (as amended), **Davis-Bacon wage requirements are triggered in the CDBG Program as follows:**

(i) When CDBG is used to finance construction work in whole or in part -- laborers and mechanics employed by contractors or subcontractors in such construction work shall be paid wages at rates not less than those prevailing on similar construction work in the same locality. **This provision does not mention anything about a number of units; it only states that Davis-Bacon is triggered when CDBG is used to finance construction work in whole or in part. The key activity here is “construction” that triggers the use of Davis-Bacon wages.**

(ii) When CDBG is used to finance the rehabilitation of a residential property that has at least 8 units. Key aspects of this provision are “rehabilitation”, “residential”, and “8 units”. The activity must be rehabilitation; the property must be residential (be it an apartment complex, a home or an assisted living facility); and must have at least 8 units. **CDBG-assisted contracts for the **rehabilitation of seven or less residential units in a single residential are exempt from compliance with the provisions of the Davis-Bacon Act.****

Example: A community wants to use **CDBG** funds to finance the building of an assisted living facility (which is the same as constructing the facility); therefore, Davis-Bacon wage requirements are under criterion item (i) above since the activity is construction. The number of units involved is irrelevant.

Example: A community plans to use **CDBG** funds to finance the **rehabilitation of homes for 9 households at 9 different locations**. Davis-Bacon wage requirements **do not apply** to this rehabilitation work – since the work will not be done at one residential property. Each of the 9 separate **residential** properties has only one housing unit – none of the properties has at least 8 units.

4. **For more information about Davis-Bacon Act compliance**, contact your CDBG project liaison. For updated regulations and guidance, you can visit **the Davis-Bacon Act compliance website** at <http://www.dol.gov/compliance/laws/comp-dbra.htm>

5. **Labor Standards and CDBG Grants to Montana Counties for Projects within Montana's Indian Reservations**

- Under federal law, eligible applicants for Montana Department of Commerce's **State CDBG Program** funding are limited to general-purpose local governments -- i.e., counties, incorporated cities and towns, and consolidated city-county governments.
- Among Montana municipalities, only Billings, Great Falls, and Missoula are ineligible to apply to the State CDBG Program because they receive CDBG funds from a separate HUD allocation for communities with populations over 50,000 (the **CDBG Entitlement Communities Program**). You can get information about the Entitlements CDBG Program at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/entitlement
- Since 1982, Montana's CDBG Program has been providing infrastructure, affordable housing, and economic development assistance to Montana incorporated cities, towns, and counties. **This assistance has included funding for incorporated communities located within Montana's tribal reservations, such as Browning, Lodge Grass, and Poplar. The CDBG program has also assisted county water and sewer districts located on reservations, such as the Ashland Water and Sewer District where Rosebud County agreed to sponsor the project.**
- **Tribal governments are not eligible under federal law to receive CDBG grants from a state CDBG Program.**
 - However, there is a separate **Indian CDBG Program** for Tribal governments. <http://www.hud.gov/offices/pih/ih/grants/icdbg.cfm>
 - Thus, Montana's Indian tribes also receive CDBG funds, but from a separate HUD **Indian CDBG (ICDBG) Program**. The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons. For more information regarding the Indian CDBG program, please contact the Office of Native American Programs at the HUD – Denver, Colorado regional office -- (303) 672-5465; website listed above.
- While Tribal governments cannot apply directly for State CDBG Program funds, **counties can apply for Montana CDBG funds for projects to assist unincorporated communities or tribal utility authorities within a reservation boundary.**

- While county governments can apply for and receive grants on behalf of projects on a reservation or to benefit tribal members, there are two important cautions that must be observed:
 - 1) the local county government needs to ensure that they have legal authority to carry out activities on a reservation; and
 - 2) Indian Preference hiring rules apply only to the Indian CDBG Program; it would violate civil rights laws for State CDBG funds to assist an activity where one must be Native American to participate.

Background: On October 25, 2005, at Montana's request, HUD clarified that it is permissible, under federal law, for a county CDBG recipient to assist projects principally benefiting county residents who are members of an Indian Tribe. When members of an Indian Tribe are also residents of a county, that county can use CDBG funds to assist public facilities or services predominantly used by Indians, including those who live on Indian reservations or on allotted Indian land. Therefore, the Montana State CDBG Program now allows State CDBG funds to be awarded to counties that apply on behalf of tribal utility authorities to assist tribal communities, providing all other federal and state CDBG requirements are met. All such applications will be considered during the regular grant competition for public facilities applicants.

B. STATE LABOR STANDARDS REQUIREMENTS

■ If Community Development Block Grant (CDBG) funds will be used to help fund a public facilities project, the federal (Davis-Bacon) prevailing wage requirements supersede those of the State of Montana's Department of Labor and Industry.

The following laws provide the statutory authority for the state requirements related to workers' wages and hours on local government public facility projects.

1. **Public Construction Contracts: Special Labor Conditions (Title 18, Chapter 2, Part 4, MCA)** This Montana law includes special labor requirements applicable to state or local public works projects. Section 18-2-402, http://leg.mt.gov/bills/mca_toc/18_2_4.htm, provides for the Montana Commissioner of Labor to determine the prevailing wages that will apply to public works projects which are **not** subject to the **federal** prevailing wage law (the federal Davis-Bacon Act). The **Montana** prevailing wage law is often referred to as the "Little Davis-Bacon Act." **CDBG-funded projects are subject to the federal prevailing wages law.**

Section 18-2-403, MCA, <http://leg.mt.gov/bills/mca/18/2/18-2-403.htm>, requires that a preference for the hiring of Montana residents for construction work be included in all bid specifications and contracts for public works projects that are not subject to federal requirements that prohibit such preferences. CDBG-funded projects are subject to the federal prevailing wages law.

2. **Workers' Compensation Act (Title 39, Chapter 71, Part 1)**. This law requires employers to provide workers' compensation insurance to assure wage supplements and medical benefits for workers suffering from work-related injury or disease. For the Workers' Compensation law, see http://leg.mt.gov/bills/mca_toc/39_71_1.htm. For more information visit the Montana Department of Labor's Workers' Compensation website: <http://erd.dli.mt.gov/workers-comp-regulations-bureau.html>

NOTE: The above is a brief summary of Montana's major labor laws. Local officials and staff or project consultants should always consult the actual text of current Montana law and regulations if any questions arise.

For guidance on the application of Montana's labor laws contact:

Labor Standards Bureau, <http://erd.dli.mt.gov/labor-standards-bureau.html>
Montana Department of Labor and Industry
P.O. Box 6518
Helena, MT 59604-6518
Telephone: (406) 444-1376

III. GRANTEE LABOR STANDARDS RESPONSIBILITIES

CDBG recipients must take the following actions to ensure that all requirements related to labor standards are satisfied for CDBG-funded construction projects. As noted earlier, applicable civil rights requirements must also be complied with.

Step 1 - Monitor and Assure Compliance with Federal Davis-Bacon Wage Provisions

Assuring compliance with the applicable federal Davis-Bacon prevailing wage provisions by CDBG recipients is a condition for receipt of CDBG funds.

- Local officials should designate a person who will be responsible for assuring prevailing wage compliance (i.e., compliance with federal Davis-Bacon wage provisions). This designation should be in the CDBG recipient's Project Management Plan, discussed in Chapter 1, Project Startup, and before holding the pre-construction conference.
- This person will be responsible for ensuring compliance with federal labor requirements -- **by means of documented weekly reviews of all weekly payrolls and interviews with contractors' employees** -- and will serve as liaison with the contractor, the project engineer or architect, and MDOC. In most cases, this will be the project manager who has been assigned overall administrative responsibility. In some cases, the project engineer/architect may be assigned to oversee prevailing wage compliance.

Step 2 - Include Labor Standards Provisions in Bid Documents

The Department of Labor regulations (at 29 CFR Part 1) establish the procedures for predetermining the wage rates required to be included in bid specifications and contracts for construction projects to which the federal Davis Bacon Act and related Acts apply.

- Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed.
- Workers need to know what wages and benefits are required by the federal Davis Bacon Act; and the Davis-Bacon wages need to be posted at the work site.
- Additionally, each bidder and the contractor selected is required to provide specific certifications assuring the CDBG recipient that they will comply with the prescribed labor standards requirements.

- Specific bid and contract language and certifications are provided for construction contracts in the *CDBG Supplemental General Conditions and Federal Labor Standards Provisions*, which appears as **Exhibit 9-B** in Chapter 9 of this Manual, Construction Management: Public Facilities and New Housing Construction.

- It is generally the responsibility of the CDBG grantee whose projects include Davis-Bacon covered construction to:
 - Ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contract(s). See 29 CFR 1.5, and 1.6(b).
 - Advise contractors which schedule of federal prevailing wages applies to various construction items if a contract includes multiple wage schedules.
 - Be able / ready to advise contractors regarding the duties performed by the various crafts in the wage determination, if they inquire.
 - If two or more classifications in the applicable wage determination may perform the work in question, an area practice survey or other method of identifying the proper Davis-bacon wage may be required. Contact your CDBG liaison for guidance in handling this situation -- and also if the Davis-Bacon wage rate determination does not list a job category that is being utilized in the construction project.

- Bidders must also comply with civil rights requirements as described in Chapter 5, Civil Rights. The prescribed civil rights language for bid documents and contracts is also included in the *Supplemental General Conditions* of **Exhibit 9-B**. These contract provisions require that each contractor develop and document specific plans to:
 - utilize local businesses (Chapter 5's **Exhibit 5-C** contains the required Section 3 clauses and has more details about Section 3);
 - promote nondiscrimination;
 - hire local low and moderate income persons (in compliance with Section 3 rules); and
 - utilize minority and Disadvantaged Business Enterprises (DBE) businesses.
- CDBG recipients are also required to maintain current data on bid awards to contractors and subcontractors in their labor standards file.
 - The *Contract Reporting Form (Exhibit 5-J)* must be completed at the time each contract and subcontract exceeding \$10,000 is awarded,
 - including those with contractors and subcontractors that are not Disadvantaged Business Enterprises (DBEs – see Chapters 5 and 9).

 **Step 3 - Request The Federal Davis-Bacon Wage Rate Determination**

- **A “Request for Wage Determination” should be submitted to CDBG within the 90 days prior to a scheduled bid opening date. (See Exhibit 6-B.)**
 - This request may be made by letter, electronic mail, fax, or a telephone call to the MDOC CDBG staff assigned as liaison for your project. If you request the wage determination (called a “general decision”) by telephone, be sure to make and retain notes indicating the date and time of your request to MDOC.

- Federal Davis-Bacon wage rate determinations (“general decisions”) are issued by the U.S. Department of Labor for each State and county by means of issuing a “general decision” (published at <http://www.access.gpo.gov/davisbacon/mt.html>). Subsequent modifications of the original decision are also issued (also published at <http://www.access.gpo.gov/davisbacon/mt.html>)
- These wage rate determinations are meant to be all-inclusive and representative of an area's prevailing basic wage (hourly wage) and fringe benefits for every type of job classification of laborers and mechanics within their respective industry category. These hourly wage rates will vary for the different *zones* that might be involved in a construction project. (See more below about “zones” and “zone hourly rate pay.”)
 - Your project’s CDBG liaison will regularly review the wage determinations posted by the U.S. Department of Labor and will forward a copy of the applicable determination for inclusion in the bid document.
 - **To identify the correct wage determination, it is very important that the CDBG liaison be provided the following information, since each of these factors affects which rates are applicable to your project:**
 - estimated contract cost;
 - type of work (e.g., installation of waterlines, building construction, new housing construction, etc.)
 - anticipated bid opening date (wages rates published ten days before a bid open must be used); and
 - exact project location.
 - **Your project’s location may be in more than one wage district. When entering into construction services contracts that cover more than one wage district,** be aware of the requirements of ARM 24.17.144(2) which states:
 - “If a contract for public works is to be performed in more than one district where a different standard prevailing rate of wages is established for a particular craft, classification or type of worker, the highest rate is the rate to be included in the bid specifications and contract provision.”
 - **This requires the contractor to pay the highest of the wage rates in effect for the districts covered by the contract.**

Zone Hourly Pay Rate (“Zone Pay”)

“Zone pay” is actually “zone hourly rate pay” and it is **an amount that is to be added to the base hourly rate when calculating pay, including both regular pay and overtime pay.** The Denver office of the U.S. Department of Housing and Urban Development has confirmed that these zone rate requirements apply to the Montana State CDBG Program.

The published hourly wage (that is, the base hourly rate) **combined with the zone hourly pay amount** (that is, the **zone hourly rate** that is listed in the federal wage rate determination that applies to the project) **becomes an employee’s base rate** (on which both **regular pay** and **overtime pay** are based).

“Zone pay” is thus a zone **hourly rate** – it is not travel pay. “Zone pay” is **additional hourly pay** related to proximity to services. “Zone hourly rate” is the terminology used in the federal Davis-Bacon wage rate determination documents for Montana, which can be found at the following website: <http://www.wdol.gov/wdol/scafiles/davisbacon/mt.html> Zone rate pay is not like fringe pay, since **zone rate pay is properly described as a “zone hourly rate”** and, as stated above, “zone pay” **it is**

an amount that is to be added to the base hourly rate when calculating pay, including when calculating both regular pay and overtime pay.

There are three “zone hourly rates applicable to *Heavy Construction* wages. The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job: Billings, Bozeman, Butte, Great Falls, Havre, Helena, Kalispell, Lewistown, Miles City, Missoula.

Zone 1: 0 to 30 miles (Base Pay)

Zone 2: 30 to 60 miles (Base Pay + Zone 2 Hourly Rate)

Zone 3: Over 60 miles (Base Pay + Zone 3 Hourly Rate)

Example of how to include zone hourly pay rates in calculations of pay due:

If the *base hourly rate* for a worker (as listed in the federal Davis-Bacon wage rate determination document for the project) is \$21.09 and the *zone pay* is listed as \$4.70, then the *appropriate employee’s base hourly rate* is \$25.79 an hour (\$21.09/hour + \$4.70/hour).

Under CDBG rules, that rate (\$25.79 in this example) is the rate that is to be used in calculating pay for regular hours and also for overtime hours.

Overtime pay = 1.5 x [\$21.09 base hourly pay rate + \$4.70 zone hourly pay rate] + fringe pay.

Overtime Pay

Overtime pay must be provided after 40 hours have been worked in a workweek.

Overtime pay = (base hourly pay rate + zone hourly pay rate) x (1.5) + fringe pay

▪ **Federal Davis-Bacon wage rate determinations are issued in the four basic categories within the construction industry:**

1. ***Heavy Construction***
2. ***Highway Construction***
3. ***Building Construction, and***
4. ***Residential Construction.***

▪ In most cases, CDBG projects will use only one of the prevailing wage rates rate categories (usually the federal *Heavy Construction* prevailing wage rates for Public Facilities projects) and usually *Residential Construction* rates for projects such as the construction of new senior housing or construction of new low-income housing.)

▪ **However, in certain cases, more than one wage determination needs to be included in the bid document by the project engineer or architect.**

▪ A guideline from the HUD Labor Relations Office in Denver, referred to as the "**80-20 Rule**," can generally be followed to determine when more than one wage determination should be used for CDBG-funded construction contracts.

- Work with your CDBG project liaison to get approval for your bid solicitation document (which should include only wage rates that have been reviewed and approved by MDOC/CDBG).

- **Example #1:** This "rule-of-thumb" provides that if building construction is a "significant component" of the project (the budget for building construction exceeds 20% of the total anticipated construction contract amount), then the project engineer should include *both* Heavy Construction *and* Building Construction rates in the bid document.
 - In addition the HUD Labor Relations Office has advised that where building construction exceeds \$1 million dollars in value, the Building Construction wage rates should be included in the bid document.
- **Example #2:** The same "**80-20 Rule**" would apply to a public facility project which is principally building construction, such as a sewage treatment plant building, but which also includes more than 20% of non-building construction activity. In such cases, the project engineer should include both Building Construction and Heavy Construction prevailing wage rates in the bid document.

This is a guideline, not a rigid requirement. If your project appears to fall under the "80-20 Rule" -- or where another component representing a significantly different activity may exceed \$1 million in value, consult your CDBG liaison for guidance.

▪ **Unclassified Workers: Job Classifications Not Listed in the Wage Determination**

- In the event the construction project will involve laborers or mechanics **with job classifications that do not appear in the wage determination document provided**, the CDBG recipient must make a request to MDOC for an appropriate classification.
- HUD Form 4230A, "Report of Additional Classification and Wage Rate" (**Exhibit 6-C**) should be used for this request.

 **Step 4 – Re-verify the Wage Rate in the Solicitation for Bids**

- A copy of the current wage rate determinations provided by the CDBG liaison must be included in any solicitation for bids. Grantees must be sure to verify that the determination is the most current available from the U.S. Department of Labor.
 - Therefore, **not less than fifteen work days prior to the bid opening**, your CDBG liaison must be contacted by telephone, electronic mail, fax, or in writing to determine whether the wage rate decisions included in the bid solicitation are still current.
 - Federal Davis-Bacon wage rates for Montana are posted at the Davis-Bacon website's page for Montana, <http://www.access.gpo.gov/davisbacon/mt.html>. Advance notice of any rate changes are also posted weekly at <http://www.wdol.gov/newdba.aspx>.
 - In those instances where the U.S. Department of Labor has issued a modification of an earlier wage determination that was thought to be applicable to a project MDOC may require local officials to provide the new rate decision to all potential bidders by addendum, should a reasonable amount of time allow for this procedure.
 - Modifications to applicable wage rate determinations for your project that are **posted by HUD at the Davis-Bacon website ten days before bid opening need to be utilized**.
 - Modifications to the wage rate determination that are **posted at the Davis-Bacon webpage less than ten days before bid opening do not have to be used in the project**.

- The federal Davis-Bacon wage rates applicable at the time of the bid opening are those that are applicable for the duration of the contract entered into with the lowest responsive bidder.)

You should note that Davis-Bacon wage determinations have the following time limitations:

- If the wage determination received from MDOC is not used for bid solicitation within 180 days of issuance**, it is void and a new request for determination must be submitted to MDOC.
- If a contract is not awarded within 90 days of the bid opening**, any applicable later modifications to the original wage determination must be included in the contract.
- If construction has not commenced within 90 days of the signing of the contract**, any applicable later modifications to the original wage determination must be included in the contract.

According to the HUD Labor Relations Office, the modifications under items **b** and **c** above can be incorporated by a Change Order, and do not require re-bidding.

Grantees should also check with their legal advisors and consultant engineers/architects and with CDBG staff, since there may be more restrictive or different time frames, such as 60 days under State law, for such contract changes in the actual bid document. If this situation arises, please contact your CDBG liaison for guidance.

Step 5 - Verify Bidder Eligibility

- The U.S. General Services Administration maintains lists of contractors that have been found in serious violation of federal labor standards or other requirements, and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. **CDBG grantees are required to obtain MDOC clearance (by means of CDBG conducting a state and federal debarment check) on all tentatively proposed prime contractors (and identified subcontractors) and consultants prior to awarding any CDBG funded contracts.**
- As soon as possible following the bid opening, and before awarding any construction or consultant contract, notification must be given to MDOC of (1) the name of the firm selected for contract negotiation on the pending contract and (2) its principal owner(s) and subcontractors.
 - See sample letter, **Exhibit 6-D**. A copy of the letter requesting a debarment check can also be sent by facsimile machine (fax) to expedite the request. The request can also be made by telephone to the MDOC CDBG staff assigned as liaison for your project.
 - DUNS numbers for all the contractors are required so that CDBG can conduct the required federal debarment check. This new requirement, effective January 1, 2009, was listed in Appendix Q of the 2009 CDBG Housing and Public Facilities Grant Application Guidelines, on line at <http://comdev.mt.gov/CDBG/requiredappforms.mcp>
 - The requirement that the local government's DUNS (Data Universal Numbering System) Number must be provided by all applicants is a compliance requirement of the Federal Funding Accountability and Transparency Act of 2006 which went into effect January 1, 2009. **A contractor can get a DUNS number from the Dun & Bradstreet (D&B) Government Customer Response Center, <http://fedgov.dnb.com/webform/displayHomePage.do>**

- Getting a DUNS number can be done on the Web at the address above -- and it can also be obtained over the phone (call 1-866-705-5711). See http://fedgov.dnb.com/webform/pages/reqDuns_phone.jsp
- The CDBG liaison will then check the General Services Administration's "System of Awards Management" (at <https://www.sam.gov/portal/public/SAM/>). CDBG will also check the State of Montana debarment system, <http://gsd.mt.gov/ProcurementServices/debarredsuspendingvendors.mcp.x>, to determine if that contractor's name, any principal's name, or the name of his/her firm appears.
- MDOC will provide the grantee with a notice stating whether the prospective contractor is eligible or ineligible to be retained for the project.
 - If the contractor is determined to be ineligible, the contract may be offered to the first alternate bidder or the bidding procedures may be reopened.
 - A copy of any correspondence sent or received from MDOC or notes taken for telephone contacts with MDOC should be retained to document this step.



Step 6 –

Inform Contractor(s) of Federal Requirements by Conducting a Pre-construction Conference and by Posting Important Documents at the Work Site

- **Following the contract award for construction projects involving CDBG funds, the CDBG recipient should hold a pre-construction conference.**
 - The CDBG recipient and prime contractor should **include all subcontractors** in the discussions to ensure that they are aware that they must also comply with the federal labor standards and equal employment opportunity provisions. The project architect and/or engineer (if applicable) will attend the conference to cover the technical or other contract related issues for the CDBG recipient.
 - The CDBG recipient's project manager should be invited to cover the federal or state compliance issues.
- **The pre-construction conference represents a key opportunity prior to the beginning of project construction for giving instructions to the contractor.** A well-planned and executed conference can help prevent problems and misunderstandings that could delay the project.
 - **To assist CDBG recipients in preparing for and conducting the required pre-construction conferences for CDBG funded construction contracts, a Pre-construction Conference Planning Guide (Exhibit 6-E) has been provided.** This contains guidance for conference preparation, a general format to be used as an agenda, supplemental information on labor standards and civil rights requirements, and a blank conference checklist and agenda which should be followed to record minutes for the conference.
- **At a minimum**, the pre-construction conference should include discussions of:
 - prevailing wage requirements, including posting prevailing wages continually at the job site;
 - employment of apprentices or trainees;
 - weekly pay for employees;
 - submission of weekly payrolls;
 - penalties if prevailing wage requirements and labor standards requirements are not complied with;
 - payment of overtime;
 - equal employment opportunity requirements;
 - employment of minorities and local workers;

- ❑ use of DBEs and local businesses;
 - ❑ notices that must be posted at the job site;
 - ❑ the use of bona fide, registered subcontractors; and
 - ❑ key responsibilities of the contractor, engineer/architect, and project manager.
- In order to document discussions that occur during the pre-construction conference, **the CDBG recipient is required to prepare minutes of the pre-construction conference.**
 - A verbatim record is not necessary -- the names of the persons who attend and a summary of the comments and issues covered is sufficient.
 - **A copy of the minutes should be maintained on file by the Project Manager as well as forwarded to the project's MDOC CDBG liaison.**

 **Copies of pages 6-E.2 through 6-E.8 of Exhibit 6-E should be provided to each contractor representative who attends the pre-construction conference.**

This helps to document that the key requirements have been covered. The form also provides a space for the participants to sign their names to acknowledge that compliance issues were discussed.

- **Notices that must be posted at the construction site** include:
 - Notice to Employees Working on Federal or Federally Financed Construction Projects, Form WH-1321 (**Exhibit 6-F**);
 - a copy of the wage rate decision;
 - Equal Employment Opportunity poster (**Exhibit 6-G**); and
 - Job Safety and Health Protection poster (**Exhibit 6-H**);
 - For posting the required notices at the job site, the contractor may use a bulletin board affixed to the inside or outside of a temporary field office or storage trailer, or if none of these are utilized, on a plywood billboard located near the site of construction activities.
 - The current wage rates would typically be put under a weatherproof plastic covering and posted with the required notices. Regardless of the method used, it is the contractor's responsibility to provide adequate information to his employees regarding payroll and labor protections.
- **Contractor reporting requirements** include:
 - **Weekly Payroll Reports**, which must be submitted **weekly** by both the prime **contractor** and **subcontractor(s)**; and
 - Notice of Approved Apprenticeship or Trainee Program, which must also be submitted -- if applicable.

- Contractors are urged to use the U.S. Department of Labor (DOL), Payroll Form WH-347. (See sample Form WH-347, **Exhibit 6-I**.) Contractors may also use and furnish computerized weekly payrolls in lieu of the standard Payroll Form WH-347, if the basic information contained on the WH-347 is provided and the contractor includes a signed certification, which is located on the reverse side of the WH-347. The text of the "weekly statement with respect to the payment of wages," which is required by regulations of the U.S. Secretary of Labor, appears on the reverse side of the Exhibit 6-I form.
- Contractors can use a numerical code system for reporting job classifications on their payroll form, if the contractor submits a copy of the numerical code system with the initial payroll report and the codes appear to accurately reflect the actual duties of workers observed at the job site.
- **Exhibit 6-I (Weekly Payroll Report Forms, WH-347)** contains not only samples of these forms but also examples and instructions for the contractor to follow for completing and filing all the required weekly payrolls on the project.
 - For example, the CDBG recipient should be aware that weekly payroll reports are also required from subcontractors identified as "working owners."
 - A "sole-proprietor" who performs work on the project must still submit weekly payrolls showing himself or herself as "owner", the work classification and the daily and total hours worked.
- To provide additional detailed guidance to contractors for the proper completion and use of the above weekly payroll reports, see "Contractor Payroll Information" (**Exhibit 6-J**). These forms may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 80402.

Step 7 – CDBG Grantees Monitor Contractor(s) Performance

- It is the Project Manager's responsibility to monitor construction activities to ensure that:
 - a. all required notices are posted prominently at the construction site,
 - b. the contractor's weekly payroll reports are accurate and submitted weekly as required, and
 - c. that the contractor is complying with applicable labor standards.
- This monitoring function can be accomplished through the following activities:
 - **conducting on-site inspections** to ensure that required notices and copies of the applicable wage rates are posted at reasonably accessible locations for the workers to review;
 - **conducting (required) interviews with construction employees** to confirm job classifications and pay rates. **Interviews should be conducted at least once a month with a representative of each classification of laborers involved in the construction and at least 10 percent of the workforce.**

- The form to be used for construction employee interviews, instructions for conducting the interviews, a completed sample interview form, and instructions for finding the appropriate wage rate based on the sample interview are provided as **Exhibit 6-K**);
- **comparing weekly payroll reports to the prevailing Davis-Bacon wage rate decision and documenting the completion of these payroll reviews.**
 - Weekly payroll reports must be submitted by the contractor within seven days following completion of the workweek and should be promptly reviewed weekly by the Project Manager or by the designated Labor Standards Officer.

REVIEW OF WEEKLY PAYROLL REPORTS:

- **Additional guidance to CDBG recipients on the payroll review and employee interview processes is provided in *Exhibit 6-K* of this chapter.**
- **The CDBG recipient's Project Manager should initial and date each payroll to document that the payroll review has been completed. CDBG staff will review documentation that each weekly payroll has been reviewed.** You must maintain adequate records such as these for MDOC review to demonstrate that all labor standards provisions have been complied with and workers' rights are protected.
- **CDBG has provided a form (Exhibit 6-P) for the Project Manager/Labor Compliance Officer to use to verify payroll review, to authorize payment to the contractor, and to certify that the contractor has complied with labor and civil rights requirements as outlined in the CDBG Project Administration Manual and agreed upon by contract. The Certification of Labor Compliance (Exhibit 6-P) must be submitted to CDBG, during periods of construction, with all drawdown requests to any funding source.**
- **During periods of construction, drawdown requests to CDBG must be accompanied by Exhibit 6-K, Record of Employee Interviews. (See Chapter 4, pages 4-6 and following.)**
- **CDBG also requires that copies of the reviewed weekly payrolls (initialed, annotated as necessary and dated) be submitted with drawdown requests.**

Use of Volunteers

The Housing and Community Development Act exempts volunteers from Davis-Bacon Act requirements on Community Development Block Grant (CDBG) Program funded projects.

Davis-Bacon wage rates shall not apply to any individual that:

- performs services for which the individual volunteered;

- does not receive compensation for such services; or is paid expenses, reasonable benefits, or a nominal fee for such services; and
- is not otherwise employed at any time in the construction work.”

The Project Manager should use and obtain a signed volunteer certification form (**Exhibit 6-M**) from each volunteer worker, other than the contractor's employees, performing work on CDBG-funded project activities.

Step 8 - Investigate Labor Standards Violations

- Violations of labor standards requirements may surface as the result of either monitoring or through a specific complaint by a construction worker.
 - In either instance, **the CDBG recipient is responsible for thoroughly investigating and documenting the alleged violation.**
 - If a violation is confirmed, the Project Manager should first work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction.
 - .Where the contractor refuses to address the violation or continues to violate labor standards provisions, the CDBG program specialist should be promptly notified in writing of the violation.
 - The contractor should be informed that an unresolved finding of labor standards violation could result in disbarment and make the contractor ineligible for participation in CDBG-assisted construction projects in the future.

Step 9 - Maintain Labor Standards Files

- **You must maintain adequate records for MDOC/CDB G review to demonstrate that all labor standards provisions have been complied with and workers’ rights are protected.**
- **For each construction contract, a Labor Standards file should be maintained which includes the following items:**
 - ❑ copies of all applicable Wage Rate Decisions;
 - ❑ evidence that labor standards provisions are included in bid packages and contracts;
 - ❑ the MDOC/CDBG notice of contractor eligibility (not on the federal or state debarred parties list);
 - ❑ a copy of the pre-construction conference minutes;
 - ❑ the Contract Reporting Form (**Exhibit 5-J**);
 - ❑ evidence that all required notices have been posted at the construction site (such as photographs taken on site);
 - ❑ the contractor's weekly payroll reports (numbered sequentially and the final one marked "Final");

- ❑ evidence (*signature/initials, review dates, notes*) that show that all weekly payroll reports have been reviewed and verified as correct (also see **Exhibit 6-P**);
- ❑ records of construction worker interviews conducted (using **Exhibit 6-K**);
- ❑ evidence of any violations with supporting documentation;
- ❑ evidence of the resolution of any violations;
- ❑ copies of lien releases; and
- ❑ completed volunteer certification forms, if applicable.

CHAPTER 6

EXHIBITS

- 6-A Federal Labor Standards Provisions: HUD-4010**
- 6-B Request for Wage Determination**
- 6-C Report of Additional Classification and Wage Rate: HUD-4230A**
- 6-D Request for Verification of Bidder Eligibility**
- 6-E Pre-construction Conference Planning Guide**
- 6-F Federal Wage Poster: WH-1321**
- 6-G Equal Employment Opportunity Poster**
- 6-H Job Safety and Health Protection Poster**
- 6-I Weekly Payroll Report Forms: WH-347 (Payroll) with Instructions for Completing Payroll Form WH-347**
- 6-J Contractor Payroll Information**
- 6-K Employee Interview Form**
- 6-L Labor Standards Definitions**
- 6-M Volunteer Certification Form**
- 6-N Contractor's Receipt of Required Program Materials**
- 6-O Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects**
- 6-P Certification of Labor and Civil Rights Compliance and Authorization for Payment**