



Lexington County HOME-ARP Comprehensive Policies & Procedures

Updated: May 8th, 2023

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I. Version History

Version	Date	Page(s)	Description
1.0	09/15/2022	1-71	Original Version
2.0			
3.0			

B. Version Policy

Version history is tracked in the table above, with notes regarding version changes. The dates of each publication are also tracked in this table. The first version of this document is 1.0.

Substantive changes within this document that reflect a policy change will result in the issuance of a new version 2.0, an increase in the primary version number. Future policy changes will result in additional revision and issuance of a new primary version number.

Non-substantive changes within this document such as minor wording and editing, or clarification of existing policy, that do not affect the interpretation or applicability of the policy will be included in minor version updates denoted by a sequential number increase after the primary version number.

II. Program Background

In order to address the continued impacts of the COVID-19 pandemic, the American Rescue Plan (ARP) Act of 2021 (P.L. 117-2) directed the U.S. Department of Housing and Urban Development (HUD) to allocate \$5 billion for the HOME Investment Partnerships Program (HOME) to address the need for homelessness assistance and supportive services. The ARP funds to be administered through the HOME program are intended to perform four activities that must primarily benefit qualifying individuals and families. These activities and qualifying individuals and families are described in Part B below.

These funds, allocated as HOME-ARP, were allocated to assist in addressing homelessness in Lexington County. Lexington County was allocated \$2,619,353 in HOME-ARP funds under CPD-21-10, issued September 13, 2021 (Notice). The program is governed by Title II of NAHA as the authorizing statute for the HOME Investment Partnerships Program (HOME) and applicable HOME regulations at 24 CFR part 92. Additionally, the “Appendix” titled: “Waivers and Alternative Requirements for Implementation of the HOME American Rescue Plan (HOME-ARP) Program”, issued September 8, 2021, describes waivers and alternative requirements imposed on all HOME-ARP awards by the CPD Notice entitled “Requirement for the Use of Funds in the HOME-American Rescue Plan Program”, (the “HOME-ARP Notice”).

B. Program Eligibility

1. HOME-ARP Eligible Activity

This special round of funding is identified as HOME-ARP and is intended to address the need for homelessness assistance and supportive services for qualifying individuals and families who are homeless, at risk of homelessness, or in other vulnerable populations. There are four eligible activities for funding under HOME-ARP which include:

- *Development and support of affordable housing,*
- *Tenant-based rental assistance (TBRA)*
- *Provision of supportive services; and*
- *Acquisition and development of non-congregate shelter units*

In addition to HOME-ARP funded projects having to meet an activity eligibility requirement, they are also required to assist one of the four Qualifying Populations (QPs) listed below:

- *Homeless (as defined in 24 CFR 91.5 “Homeless” (1), (2), or (3))*
- *Those at risk of homelessness (as defined in 24 CFR 91.5 “At the risk of homelessness”)*
- *Those fleeing domestic violence, dating violence, sexual assault, stalking, or human trafficking, (as defined in 24 CFR 5.2003)*
- *Other populations with a high risk of housing instability (including highly-cost-burdened low-income households, households who have moved two or more times in the last 60 days, and households living in a hotel/motel)*

III. Allocation Plan

The HOME-ARP program requires the development of an Allocation Plan. In order to receive HOME-ARP funds, the County was required to engage in consultation and public participation processes and develop a HOME-ARP allocation plan in accordance with the HOME-ARP Notice. The HOME-ARP allocation plan was required to describe how the County intends to distribute HOME-ARP funds, including how it will use these funds to address the needs of HOME-ARP qualifying populations. The Allocation Plan included the following:

- A summary of the consultation process and results of upfront consultation.
- A summary of comments received through the public participation process and a summary of any comments or recommendations not accepted and the reasons why they were not incorporated into final plan.
- A description of HOME-ARP qualifying populations within the jurisdiction.
- An assessment of unmet needs of each qualifying population.
- An assessment of gaps in housing and shelter inventory, homeless assistance and services, and homelessness prevention service delivery system.
- A summary of the planned use of HOME-ARP funds for eligible activities based on the unmet needs of the qualifying populations.
- An estimate of the number of housing units for qualifying populations the participating jurisdiction (PJ) will produce or preserve with its HOME-ARP allocation; and
- A description of any preferences for individuals and families in a particular qualifying population or a segment of a qualifying population.

All the above required elements of the HOME-ARP allocation plan are part of the FY 2021 annual action plan for purposes of the HOME-ARP program.

Before developing the HOME-ARP allocation plan, the County was required to consult with agencies and service providers whose clientele include the HOME-ARP qualifying populations to identify unmet needs and gaps in housing or service delivery systems. Lexington County conducted its stakeholder consultation in conformity with the HOME-ARP Appendix – Waivers and Alternative Requirements. While developing the plan, the County consulted with its housing and community development partners. These partners include, but are not limited to, the following nonprofit organizations:

- Sistercare, Inc.
- One80 Place
- Homeless No More
- United Way of the Midlands
- Mission Lexington
- Central South Carolina Habitat for Humanity
- The Salvation Army of Midlands
- South Carolina Victim Assistance Network
- Santee-Lynches Affordable Housing, and
- Lexington-Richland Alcohol and Drug Abuse Council (LRADAC).

A total of fifty-four (54) stakeholders, organizations, and community agencies were asked to complete a survey and provide their input concerning the HOME-ARP grant, eligible activities, and the proposed budget. Each stakeholder articulated their gap in services and/or housing needs by providing written responses within the provider survey and/or through verbal input, via phone calls. Emails containing access to the survey were sent to organizations on August 10, 2022, seeking feedback and requesting they be returned no later than August 19, 2022, as noted in the request.

During this time, the survey was live on the County website and ongoing "calls to action" occurred for participation through Lexington's Facebook page, County of Lexington Twitter page, survey web link, and the interested parties email list, reaching over 400 individuals. An initial low turn-out resulted in Lexington County providing an extension for three (3) extra days through August 22, 2022, to gain additional points of view, before consolidating for public consumption. Follow-up phone calls, social media posts, and reminder emails were an integral part of obtaining a variety of participating organizational views.

The United Way of the Midlands, the lead agency for the Continuum of Care (CoC), released the request for feedback on behalf of the Midlands Area Consortium for the Homeless (MACH). Twenty-five (25) individual providers or community advocates participated in the survey, representing: emergency shelters, ESG/COC/ HOME-TBRA subrecipients, substance abuse, the criminal justice system, healthcare, civil rights, and fair housing, affordable housing development, persons with disabilities, and persons fleeing, attempting to flee domestic violence, dating violence, sexual assault, stalking or human trafficking.

These consulted stakeholders provided relevant knowledge speaking to the needs, service gaps, and potential activities that would best benefit qualified populations.

IV. Citizen Participation

Per guidance provided through the HOME-ARP Appendix the following citizen participation requirements are applicable:

- 1) The County must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submitting the HOME-ARP allocation plan to HUD, the County must provide residents with reasonable notice and an opportunity to comment on the proposed HOME-ARP allocation plan of no less than 15 calendar days. The County must follow its adopted requirements for "reasonable notice and an opportunity to comment" for plan amendments in its current citizen participation plan except for where it conflicts with the requirements of this Appendix. In addition, the County must hold at least one public hearing during the development of the HOME-ARP allocation plan prior to submitting the plan to HUD.
- 2) For the purposes of HOME-ARP, the County is required to make the following information available to the public.
 - a. The amount of HOME-ARP funds the County has received.
 - b. The range of activities the County will undertake.
- 3) The County must consider any comments or views of residents received in writing, or orally at a public hearing, when preparing the HOME-ARP allocation plan. The County must describe its public participation process, including any efforts made to broaden public participation and summarize the comments or views received. The County must also include a summary of comments received through the public participation process and any comments or views not accepted and the reasons why.
- 4) Throughout the HOME-ARP allocation plan public participation process, the County must follow its applicable requirements and procedures for effective communication, accessibility, and

reasonable accommodation for persons with disabilities and providing meaningful access to participation by limited English proficient (LEP) residents that are in its current citizen participation plan.

- a. *Date(s) of public notice: 9/15/2022*
- b. *Public comment period: start date - 9/16/2022 end date – 9/30/2022*
- c. *Date(s) of public hearing: 9/30/2022*

Website Information

The County of Lexington has created a website to keep the public informed of the County’s ongoing HOME-ARP COVID-19 response and recovery efforts. The website is managed by the County’s Information Services Department; and is accessible through the Lexington County’s website. The County will maintain this website throughout the full recovery period, and will serve as the primary source of information for:

1. Action plans and amendments.
2. Required reporting.
3. Citizen participation plans.
4. Comprehensive Policies and Procedures.
5. Procurement notices/advertisements.
6. Notices of public meetings.
7. Executed contracts.
8. Activity/program information (activities described in the action plan, and other information relevant to the HOME-ARP program funds).

Revisions to the HOME-ARP website will be made in conjunction with any new activity associated with the program action plan. All HOME-ARP information will be made available in a language other than English upon request.

The HOME-ARP website can be located at: <https://lex-co.sc.gov/departments/community-development/grant-programs/home-American-Rescue-Plan-Program>

B. Substantial Amendments

HUD requires grantees to submit an amendment to the supplemental Allocation Plan portion of their Annual Action Plan when there is a substantial change in the allocation priorities or methods of distribution to projects funded with HOME-ARP. A substantial amendment is defined as one of the following:

1. Changes in the method of distributing funds.
2. Any new eligible activity funded with HOME-ARP not already identified in the Annual Action Plan or supplemental funding Allocation Plan.
3. A change to the purpose, scope, location, or beneficiaries of an activity, including new preferences not previously described in the plan.

The County must make proposed substantial amendments public and provide for a 15-day public comment period prior to submission. Upon completion of the public comment period, the County will submit substantial amendments to HUD in accordance with the HOME-ARP regulations.

C. Complaints

The County will provide, at a minimum, a timely, substantive, written response to all written citizen complaints related to HOME-ARP program or HOME-ARP funded activities. The response will be provided within 15 working days, when practicable, after receipt of the complaint. All complaints must be submitted in writing to the following address:

County of Lexington
Community Development Department
212 South Lake Drive
Lexington, South Carolina 29072

Complaints regarding fraud, waste and abuse that are not adequately addressed by the County can be forwarded to HUD via the HUD OIG Fraud Hotline.

- 1-800-347-3735
- hotline@hudoig.gov

D. Access to Records

The County will provide citizens, public agencies and other interested parties with reasonable and timely access to information and records relating to the County's HOME-ARP program and the County's use of HOME-ARP funded assistance. Specific requests for such information must be submitted in writing to:

County of Lexington
Community Development Department
212 South Lake Drive
Lexington, South Carolina 29072

V. Non-Congregate Shelter Development

A. Purpose

Lexington County HOME-ARP funds will be used to for the development of a Non-Congregate Shelter (NCS). Funds will be provided for the acquisition of property, development of a non-congregate shelter, preliminary case management for resident intake in addition to any administrative costs associated with managing HOME-ARP funds. The shelter facility will consist of approximately 12 sleeping units, office space, common area and a playground.

B. Project Details and Eligibility Requirements

The housing, shelter, and supportive service needs of qualifying populations overlap across all populations and are similar to the needs of the low-income population as a whole. Across all survey responses, participants highlighted the lack of non-congregate shelters. The acquisition and development of non-congregate shelter units is a qualified activity under HOME-ARP. Based on the consolidation of relevant reports reviewed and providers' survey responses, Lexington County has

decided to allocate its HOME-ARP funding to expanding non-congregate shelter availability. As shown within the feedback received from stakeholders, the current option for those seeking shelter facilities and services is for residents to seek shelter outside of Lexington County. Therefore, all demographic populations would benefit from the acquisition and development of a non-congregate shelter in Lexington County.

Generally, non-congregate shelters are available for people experiencing homelessness. Non-congregate is preferable to congregate shelter settings, particularly for families and individuals experiencing chronic homelessness. This type of shelter setting is a service-enriched environment, facilitating the delivery of medical care and the housing navigation services critical for locating and leasing permanent housing.

Making non-congregate shelters a permanent part of the resources available for individuals experiencing homelessness will support individuals during the period between matching to rapid rehousing and moving into a unit. Additionally, NCS has a unique ability to accommodate various needs that are not appropriate for congregate shelter settings, including accommodating populations with significant medical vulnerabilities.

C. Subrecipient Responsibilities

The subrecipient must agree to the following to receive program funds:

- Complete the application form provided to them to ensure they are a viable entity, both financially and in regard to capacity and experience, to develop and maintain the shelter and provide services.
- Read, review, and sign a Subrecipient Agreement between the County and the Subrecipient.
- Provide designs and specifications for the NCS facility to be constructed. Designs and specs must be in conformity with HOME-ARP NCS property and habitability standards.
- Provide all necessary on-site services for NCS residents.
- Agree to comply with all regulatory requirements of HOME-ARP.
- Engage in the project and agree to any additional responsibilities in accordance with the signed Subrecipient Agreement.
- Swear to the accuracy and completeness of all information provided to the program under penalty of law.

D. Quality Assurance and Quality Control (QA/QC)

The HOME-ARP Grant Manager, in coordination with the County's consulting team, reviews the materials and processes developed for the program to ensure they are in compliance with all regulatory requirements and consistent with all other program material. All documents developed by the consultant will be peer reviewed and submitted to County staff for review and approval before formal adoption into the program and made available to the public. The County's HOME-ARP staff and its consultant have established a weekly meeting to review the status of all projects and programs and to discuss the overall status of the program. These meetings help provide another layer of quality oversight and help ensure the program remains efficient and effective.

E. Property Identification and Selection

If the Subrecipient decides to utilize a piece of property which they currently own to construct the NCS, the Subrecipient must identify the property and notify the County of the intended site. The Subrecipient will in turn review the site with the County as certifying entity to ensure that the site is appropriate and eligible for such development. This includes the following:

- Verifying the property is not located in a floodplain.
- Conducting an environmental review on the site.
- Ensuring the site meets any property or habitability standards required by HUD.

In the situation where a property must be identified and voluntarily acquired by the Subrecipient to develop the NCS facility, the County will need to verify cost reasonableness of the price of the property in addition to ensuring that the site is appropriate and eligible for such development.

1. *Property Identification*

The County will work with the Subrecipient in identifying a potential shelter site if requested by the Subrecipient. The County will need to review any sites selected by the Subrecipient to ensure the site is appropriate and eligible for such development as previously described under Part E. Additionally, the County will need to confirm that construction of the facility is permissible under any local zoning, codes and land use regulations.

2. *Appraisal Process*

The Subrecipient will be required to obtain a private appraisal to determine current FMV of the property. The Subrecipient will be reimbursed by the County using HOME-ARP funds for the cost of the appraisal. The County's HOME-ARP consultant conducts a review of the appraisal to verify that the property location, specifications, characteristics, comparable sales and appraised value appear accurate. If the County determines that the appraisal appears inaccurate the County will send a list of questions or concerns to be addressed by the applicant and/or appraiser. Unresolved items will result in a denial by the County of the appraised value until all issues are resolved or another appraisal is conducted and submitted by the applicant. The County will not provide compensation for additional appraisals beyond the first conducted unless the appraisal is more than six months old due to delays by the County or the program.

3. *Property Value Determination*

The value estimated through the provided appraisal will serve as the basis of the property's valuation. The County will review the asking price of the property with consideration of the appraisal conducted for the site. The County's Assessor's Office Appraiser will determine if the asking price is a "just compensation amount". If the asking price is determined to be reasonable the property will be eligible for purchase.

All awards are subject to federal requirements under 2CFR 200, requiring that all funds used for related purposes must be deducted as a duplication of benefit. Federal law prohibits any person, business concern, or other entity from receiving federal funds for any part of such loss as to which he/she has already received financial assistance under any

other program, private insurance, charitable assistance, or any other source. Pursuant to federal regulations, the County has established safeguards in order to prevent duplication of benefits from occurring within the Program.

Please reference the Duplication of Benefits section of this document for additional information.

F. Offer and Acceptance

Once the County determines that a property is eligible for purchase, the County will notify the Subrecipient so that they can proceed with purchasing the property. The Subrecipient is responsible for the development of any materials pertaining to the purchase of the property including offer letters, legal notifications, and similar related material.

At the time of purchase, the County will require that specific deed restrictions be placed on the site to keep it in compliance with HOME-ARP regulatory requirements including, but not limited to, the following:

- The property must remain functioning as a non-congregate shelter facility meeting all of the requirements of the HOME-ARP program over the life of the Restricted Use Period (15 years).
- The facility may be converted to permanent or Continuum of Care affordable housing after the Minimum Use Period (10 years).
- Anyone obtaining ownership of the property must provide services and maintain facility standards in alignment with HOME-ARP requirements for non-congregate shelters.

A copy of the transfer of ownership documents and property deed must be provided to the County for their programmatic records.

1. Calculating Potential Duplication of Benefits

If the Subrecipient is utilizing any other funding for the acquisition of the property or development of the site, this information must be provided to the County. The County will verify that total funding does not exceed the total value of the acquisition and/or the facility construction. Excess funds will be identified as a duplication and will be subtracted from the County's HOME-ARP funding amount.

G. Uniform Relocation Act

The Uniform Relocation Act establishes minimum standards for federally funded programs/projects involving the displacement of persons from their homes, businesses, or farms due to acquisition, rehabilitation, demolition or any other reason which may permanently or temporarily displace someone involuntarily as a result of undertaking a federally funded project. If a project does involve relocation then the following items become applicable.

Under the Uniform Relocation Act (URA) displaced persons are eligible to the following benefits:

- Advisory services.

- Offer of a comparable replacement unit.
- Replacement housing payments; and
- Moving expenses. Under the URA, the term "displaced person" means:
 1. A person/business who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person/business, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after:
 - a. The date the Grantee submits a project application for HOME-ARP funds for the project that is later approved, if the Grantee has site control; or,
 - b. The date the Grantee obtains site control, if that occurs after the project application is submitted and approved.
 2. A person/business who moves permanently from the real property after the initiation of negotiations, unless the person/business is a tenant who was issued a written notice of the expected displacement prior to occupying the property (otherwise known as a "Notice of Eligibility for Relocation Assistance").
 3. A person/business who moves permanently and was not issued a Notice of Non-displacement after the application for HOME-ARP funds is approved.

Because of the voluntary nature of acquisition, property owners are not eligible for assistance under the Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act. Tenants required to relocate because of the owner's participation in the Program are eligible for assistance under URA. If tenants are present at a site to be acquired by the Subrecipient, a General Information Notice and other required Notices will be issued, consistent with URA, Section 414 of the Stafford Act, and applicable waivers. In a case where the property being purchased contains tenants eligible for relocation assistance, the County's HOME-ARP consultant will work with a URA specialist to provide assistance to the tenants occupying the property. If a property is purchased through the Program which has tenants who will be required to relocate, those tenants are considered displaced tenants who are eligible for relocation assistance under the URA.

The County will work with its Subrecipient to make every effort to identify a property for purchase which DOES NOT result in the displacement of tenants on the site including individuals/families, businesses or non-profit entities. If the purchase of the property by the Subrecipient could result in the displacement of people, businesses, or non-profit entities, the County will work with the Subrecipient to develop a Relocation Plan specific to the project and site BEFORE any agreements are signed pertaining to the potential purchase of the property.

H. Pre-Demolition Process

Before any work is to begin on the site, including any pre-demolition site prep, the Subrecipient must provide proof of property ownership to the County for review and confirmation.

The County will reserve the right, through its Subrecipient Agreement, to conduct a Vacancy Inspection by the County's HOME-ARP consultant. This will be conducted at least 24 hours prior to closing to ensure that the property to be purchased is vacant and ready for possession, as well as to identify any safety concerns prior to any further personnel entering the premises. The County's consultant will provide the signed documentation, Vacancy Inspection Form and Certificate of Abandonment Form to the County Attorney before closing.

The Vacancy Inspection will document the following items:

A. Securing of the Building



Confirm that the building is secured at time of the Vacancy Inspection. The building needs to be void of any openings that might allow persons to enter the building without a key (e.g. broken or missing windows, doors that do not lock). Any area that is not secured will be brought to the attention of the Subrecipient who will need to address the issue with the property owner who will be required to secure the building. Once the property owner notifies the Subrecipient that the building has been secured, they can call the County's consultant to reschedule Vacancy Inspection. It is the responsibility of the Subrecipient and the property owner to reschedule a closing date.

B. Safety Inspection



If structural integrity is compromised and the structure can't be tested or inspected for asbestos containing material (ACM) or lead, it will be assumed that the structure contains regulated asbestos containing material (RACM) and lead based paint and demolished accordingly. Any additional hazards should be identified and documented in the project-specific file, along with notifying the County. This includes any fire hazards or public health concerns.

C. Household Hazardous Waste Identification (HHW)



If any HHW are present at the property, these items will be documented by the County's consultant. Bid packages to demolition contractors indicate that contractors are responsible for the proper removal and disposal of on site HHW.

D. Verification of Personal Property Removal



If personal property has not been removed, the County's consultant will discuss with the Subrecipient their options; the property owner can either

postpone closing until their personal property has been removed or all items will be demolished with the existing structure or salvaged after closing.

E. Verification of Vacated Premises



If someone is still living at the premises, the County's consultant will contact the County to advise the County to delay the closing until the property is vacated.

I. Pre-Demolition

Property Keys: The Subrecipient will be responsible for obtaining the property keys from the owner at time of closing.

Selective Salvage: After the County confirms property ownership by the Subrecipient, but before the issuance of the Notice to Proceed to the Project Contractor, the County's consultant will contact local nonprofit organizations for the salvage of materials from the property. The County's consultant will work in coordination with the Subrecipient to identify an agreed upon time period that salvageable materials can be removed from the structure and open the property for salvaging. Items removed from the property for salvaging will be documented by the County's consultant.

Assignment of Asbestos/Lead Testing: The County's consultant will assign the property to the County's procured environmental testing company after the vacancy inspection has been conducted. Once the completed asbestos and lead reports are received, the County's consultant will work with the County officials to create a scope of work for the demolition/construction bid package.

Assignment of Demolition: The County's consultant will email the demolition bid packages to all respondents to the County's RFP for Non-Congregate Shelter Site Clearance and Facility Development, along with any identified Section 3 qualified construction companies. The County will receive and review bid package responses along with the Subrecipient to identify the most qualified, reasonable contractor for the project. Once the contractor is identified the County will then make an assignment of Project Contractor.

Notice of Demolition: After the County has approved the bid proposal for site demo and facility construction and assigned a contractor, the County shall issue a Notice to Proceed (NTP) to the contractor. A copy of the NTP will be placed in the property-specific project file.

J. Demolition

The Program, in coordination with the Subrecipient, will engage a contractor to demolish any existing structures identified as unnecessary by the Subrecipient and remove any trees determined by the County's arborist to be health or safety risks to persons or property. Costs for the demolition phase include costs for demolition of structures, waste disposal, asbestos abatement, and designated tree removal. Contractors will be responsible for protecting workers through the use of Lead Safe Work Practices for any site found to contain lead-based paint or assumed to have lead based paint.

The Subrecipient, in coordination with the County's Consultant, will oversee demolition of structures on the site. The Subrecipient and/or the County's Consultant will work with contractors procured to perform the demolition and removal tasks to ensure compliance with all Federal, State, and local regulations.

1. Process

Pre-Demolition/Construction Meeting: The County will require that the Subrecipient hold a pre-demo/construction meeting. This meeting will be intended to provide information to the Project Contractor regarding specific items related to regulatory compliance for the project. This will include such topics as the Property and Habitability Standards and Davis-Bacon wage compliance. Any necessary materials needed to help ensure programmatic compliance will be provided to the Project Contractor at this meeting including:

- Davis-Bacon wage rates for the project
- HUD payroll forms
- Wage compliance guidance material
- [Davis-Bacon and Labor Standards Agency/Contractor Guide](#)
 - o [Contractor Guide Addendum](#)

Project Contractor Verifications: Once the Demolition Contractor receives the executed Notice to Proceed (NTP), they can legally enter the site. The Demolition Contractor will begin by verifying that the structure is unoccupied by performing a physical inspection. At this time, the Demolition Contractor will re-verify property description and ownership and proceed with asbestos abatement, if necessary.

Utility Site Walk-Through: Prior to demolition work commencing at the property, the Project Contractor will be required to coordinate with the Subrecipient (property owner) to identify and make-safe utilities to the property. Any preparatory utility site work required before demolition will be conducted in conformity with local code and the demolition plan or scope provided by the Project Contractor.

Demolition: Once the NTP has been issued to the Project Contractor they will be provided 90 days to complete the demolition and prepare the site for the construction of the new NCS facility.

- **Hazardous Materials Processing:** In instances where hazardous materials are present, the County's consultant and the Project Contractor will lead a supplemental process for the identification, removal and disposal of asbestos, lead-based paints and other hazardous materials per State of South Carolina and U.S. Environmental Protection Agency (EPA) environmental requirements.
 - o Assessment testing is completed and samples sent to the lab (completed by County procured subcontractor, coordinated by the County's consultant).
 - o Remediation/Abatement will be based on the environmental assessment and lab reports.
 - o Project Contractor is responsible for documentation of items transferred to the landfill or other disposal sites.

- **Household Hazardous Waste (HHW) Processing:** In instances where HHW are present, the Consultant and Project Contractor will identify and record HHW. The Project Contractor is responsible for removing and disposing of HHW per State environmental agency/EPA requirements. The following activities will be required by the Project Contractor:
 - Visual assessment performed and documented
 - Removal of all identified HHW based on the environmental review
 - Documentation of all HHW waste transferred to the landfill

Once demolition is complete, the Project Contractor will schedule the Post-Demolition Inspection with the County's consultant to determine that the site is ready for facility construction.

Demolition Documentation: The HOME-ARP Program requires that all demolition related files be captured and retained. This information will need to be maintained by both the County and the Subrecipient. The County's consultant maintains all program files which will contain the required documentation for the County. This file will contain photo-documentation of the process before, during and post-demolition. This file will also include load tickets/landfill manifests to account for debris removed from the property.

K. Construction Services

The County, in coordination with the Subrecipient, will engage a contractor to provide site preparation and construction of the NCS facility. The Project Contractor, previously identified for demolition activities, will also provide construction services for the development of the NCS facility. The Project Contractor will be responsible for the complete build-out of the NCS facility according to plans and specifications provided by the Subrecipient. This includes the acquisition of any necessary permits.

Construction services consist of three primary components. The preconstruction, construction and close-out. This includes all activities which occur after the bid has been awarded and contracts between the Subrecipient and the contractor have been signed. All projects will be evaluated before the preconstruction phase begins to ensure that the project is prepared to proceed. This evaluation will include a final review of any plans or specifications, confirmation of environmental clearance, verification that all land ownership and right-of-way issues are resolved and confirmation that all other programmatic requirements are met. Any issues pertaining to these items must be resolved before construction begins.

The Subrecipient, in coordination with the County's consultant, will oversee the construction of the facility on the site. The Subrecipient and/or the County's consultant will work with Project Contractor to ensure compliance with all Federal, State, and local regulations.

Construction Standards: All construction undertaken by the Project Contractor will be conducted in compliance with local codes and ordinances. All work will be performed according to plans and specifications designed for the facility which will be made available

to the Project Contractor. All construction must also be performed in compliance with the property and habitability standards of HOME-ARP.

Inspections: The County's consultant will conduct a minimum of 7 on-site inspections:

- A minimum of 2 during demolition phase (1 during active demo and 1 once demo is complete before construction begins).
- A minimum of 4 during active construction.
- 1 upon final inspection to confirm project completion.

During these inspections the County's consultant will try to coordinate site inspections along with County building inspector visits when possible. Inspections should also be conducted with a representative of the Subrecipient when possible. The County's consultant will have a checklist of items which will be reviewed during the inspections. The inspection will involve confirmation of the following items:

- Construction in conformity with plans and specs.
- Construction is in compliance with HOME-ARP NCS facility requirements.
- Construction is in compliance with property and habitability standards.
- Project appears to be safe and secure and work is being conducted in a safe manner.
- Project appears to meet Safe Labor Standards.
- Project Contractor workers are being paid proper wages (this will only be required on two occasions, in which random workers will be selected for interview).

Wage Compliance: Due to the nature of the project, the project is subject to Davis-Bacon and Related Acts and will therefore need wage compliance conducted. See Section VII(L)(1) for additional details.

1. Preconstruction

All infrastructure projects will require a mandatory preconstruction meeting. This meeting will include the contractor, HOME-ARP staff, architect/engineer and any County or municipal staff engaged in the project. The meeting will take place at the project site if possible and reasonable. During the preconstruction meeting the following items will be addressed:

- Labor compliance (Davis-Bacon wages)
- Payroll reporting
- Section 3 requirements
- Project signage
- Site safety
- Work schedule
- Payment/invoicing procedures
- Change orders
- Inspection reporting
- Permitting

- Discuss any issues identified as part of the project evaluation before preconstruction

Any issues or concerns regarding the project before construction should be raised and addressed at this meeting.

2. *Construction*

The construction phase of the project begins after the issuance of the proceed order and after the preconstruction meeting, both of which had to have occurred in order to proceed to the construction phase. This phase will include all construction related activity and the required monitoring and compliance oversight associated with those activities. The County's consultant will be responsible for monitoring the project to ensure it conforms with the provisions of the contract established between the Subrecipient and the contractor. The County's consultant will also monitor the project to ensure compliance with any federal requirements associated with construction of the project and the utilization of HOME-ARP funds. The County's consultant will conduct site visits, confirm work completion for invoices, review change orders, assist with technical consultation, ensure Federal wage compliance, and coordinate with the Project Contractor to help ensure the timely completion of the project. The Subrecipient and/or consultant's Construction Inspectors ensure that contractors act in accordance with program policies and procedures, adhere to standards of performance and follow safety policies. The County HOME-ARP consultant will also provide assistance with overall compliance and monitoring of the projects.

- a) *Invoicing* – All construction invoicing and change orders will take place during the construction phase. The Subrecipient will submit invoices to the County on a monthly basis. Invoices will be submitted to the HOME-ARP Grant Manager or Grant Assistant for review and confirmation of work completed. The HOME-ARP Grant Manager will review the invoice with the County's consultant to ensure compliance and to verify completion of work as needed. Upon approval of the invoice by the HOME-ARP Grant Manager and the consultant, the HOME-ARP Grant Manager and/or Grant Assistant will forward the invoice to procurement for processing. Upon approval it will be sent to Finance for final payment.
- b) *Change Orders* – All change orders must be submitted to the Subrecipient and the County for review and approval. Change orders must receive approval from both the Subrecipient and the County before work can occur and payment can be dispersed.
- c) *Contractor Payment Schedule* - The Program will release award proceeds directly to the construction contractor on a monthly basis as per the scope of work and the contract between the Subrecipient and the Project Contractor.

3. *Close Out*

The construction phase will conclude after final payment has occurred, all County inspections have been conducted and passed and the HOME-ARP program staff inspect and certify the project as complete.

Close out will occur once the construction is complete and all drawdowns of HOME-ARP funds have occurred. Both the County and HOME-ARP staff must have

conducted all necessary inspections and these inspections must have passed in order for close out to occur. This phase will include the completion and submittal of any required close out or reporting documentation required by HUD. Official close out will have occurred upon HUD's confirmation that all reporting is complete and that all funds for the project are expended.

L. Documents Processing

1. *Email Processing*

Project materials, documents and communication received via email by the HOME-ARP Grant Manager or the County's consultant will be stored on the County's project-specific file. The County's consultant will review submitted documents within five business days after they receive the emailed documents.

2. *On-Site Processing*

Any documents received on site will be scanned and uploaded by the County's consultant within two business day. All documents provided in person at the County Office will be immediately uploaded and returned to the person providing said material. Hard copies of documents will be maintained in the project file folder in the County Office.

3. *Fax*

Fax documents will be accepted on a case-by-case basis.

If any submitted documents or materials are found to be inadequate, the County's consultant will reach out to the Subrecipient or the Project Contractor to inform them of the issue and request the resubmittal of the correct documentation.

M. Ongoing Project Compliance

After the non-congregate shelter facility is constructed, the County must maintain compliance factors required under HOME-ARP for the duration of the Restricted Use Period (15 years). These requirements will need to be enforced through on-site inspections and ongoing outreach to the Subrecipient. This includes:

- Confirming the property is functioning as NCS.
- Confirming residents are one of the four qualified populations permitted by HOME-ARP.
- Conducting annual site inspection to ensure property and habitability standards.
- Conducting annual site inspection to complete the Housing Quality Standards Inspection form.
- Perform any necessary follow-up inspections to verify any deficiencies are corrected properly within 6 months of inspection.
 - Life threatening deficiencies must be corrected immediately and are subject to re-inspection in 14 days.

- If any of the shelter units are converted to Continuum of Care permanent housing after the minimum use period, inspections will need to be conducted to ensure the transition has been completed and the property meets all property and habitability standards.

VI. Supportive Services

A. Purpose

Lexington County is allocating HOME-ARP funds for the provision of Supportive Services. These services will be provided by the Subrecipient and include preliminary resident applicant intake and case processing.

B. Invoicing

Subrecipient will submit invoices for Supportive Services for reimbursement on a monthly basis. The HOME-ARP Grant Manager will review the invoice with the County's consultant to ensure compliance and to verify completion of work as needed. Upon approval of the invoice by the HOME-ARP Grant Manager and the consultant, the HOME-ARP Grant Manager and/or Grant Assistant will forward the invoice to procurement for processing. Upon approval it will be sent to Finance for final payment.

VII. Administration and Programmatic Compliance

A. Procurement

Procurement is the acquisition of goods and services to be used by Lexington County to carry out activities utilizing HOME-ARP funds. The procurement process includes the decision to purchase as well as the process to complete the purchase. Lexington County will adhere to the procurement rules of Lexington County Procurement and 24 CFR Part 84 and 85 for HOME-ARP funded projects. These rules are in place to ensure that federal dollars are spent fairly and encourage open competition for the best level of service and price.

All procurements made must comply with the applicable federal requirements found in 2 CFR §200.318 – 200.326, County Ordinance Ord. No. 93-6, and the County Procurement Manual. The County's procurement policy is included in Attachment #1. Any of the County's contractors and subrecipients are required to assume responsibility for the complete effort and enforcement of laws and regulations under their contracts with the County. The County, with assistance from its HOME-ARP consultant, will manage contracts and oversee quality control through regular project oversight.

When procuring property or services to be paid for in whole or in part with HOME-ARP funds, Lexington County will first ensure compliance with its own local procurement policies and then verify that the procurement complies with state and federal requirements respectively. If the County awards funds to a subrecipient, those subrecipients will be required to maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. Conflict of Interest provisions listed at 24 CFR Part 85.36 (3) and all other applicable federal regulations will

be incorporated.

Generally, the governing statutes can be found in County Ordinance No. 93-6. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by Lexington County.

As outlined in the following table and in the Lexington County Code and Regulations, the County uses a variety of competitive source selection processes, including three simplified "small purchase" procedures, two standard competitive procedures (competitive sealed bidding and Competitive Sealed Proposal), Emergency Purchase Procedures, and qualification-based selection procedures for the acquisition of construction-related professional design services.

Federal Citation	Short Title	Lexington County Ordinance Procurement Code	Short Title
2 CFR 200.318	<i>General Procurement Standards</i>	Ord. No. 93-6, § 2-80, 1-24-94 Sec. 2-334	<i>Procedural Regulations</i>
2 CFR 200.319	<i>Competition</i>	Ord. No. 93-6, § 2-96, 1-24-94 Sec. 2-350	<i>Competitive Sealed Proposals</i>
2 CFR 200.320	<i>Methods of Procurement to be followed</i>	Ord. No. 93-6, § 2-96, 1-24-94 Sec. 2-350	<i>Competitive Sealed Proposals</i>
2 CFR 200.322	<i>Procurement of Recovered Material</i>	Ord. No. 93-6, § 2-95, 1-24-94 Sec. 2-349	<i>Surplus, obsolete and waste commodities</i>
2 CFR 200.323	<i>Contract Cost and Price</i>	Ord. No. 93-6, § 2-79, 1-24-94 Sec. 2-333	<i>Powers and duties of county purchasing agent</i>
2 CFR 200.324	<i>Federal Awarding or pass-through Entity review</i>	<i>(Compliance with this reg. to be achieved through execution of implementation of grant agreement with (HUD))</i>	
2 CFR 200.325	<i>Bonding Requirements</i>		<i>10% retainage fee and liquidated damages/Bonding Requirements</i>
2 CFR 200.326	<i>Contract Provision</i>		<i>Contract Clauses and their Administration</i>

Lexington County's policies align with the requirements set forth under 2 CFR 200.318-200.326 ensuring fair and open competition. Further ensuring consistency with federal requirements, Lexington County shall ensure that all purchase orders and contracts include any clauses required by federal statutes, executive orders and implementing regulations. All county ordinances and acts defining procurement regulations which address the federal regulations defined in 2 CFR 200.318 – 200.326 have been adopted and approved through

formal County processes including legal review. The Lexington County procurement ordinance can be found in Attachment #1.

1. Contract Management & Oversight

Contract management and oversight is the responsibility of the HOME-ARP Grant Manager. The HOME-ARP Grant Manager will ensure that the implementing contractor, as well as the County procured contractors, are held to the roles and responsibilities for which they are receiving payment.

The County's Procurement office ensures that all contracts are written based on a lump sum or unit price. Invoices received from contractors and subcontractors are reviewed for accuracy by the HOME-ARP Grant Manager for any hidden or unexpected costs or additional fees not authorized by the approved contract and payment schedule. Such fees will be denied for payment.

2. Cost Reasonableness

The County will utilize the cost principles described in 2 CFR Part 225 (OMB Circular A-87) to determine necessity and reasonableness. According to 2 CFR part 225, "A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made."

3. County, State, and Federal Procurement Laws

Any questions regarding the applicability of law or determination as to whether laws conflict must be referred to the Lexington County Legal Office and the Lexington County Procurement Manual.

In order to comply with 2 CFR 200.325, Lexington County has the option to withhold ten percent (10%) retainage per first three (3) payment requests until all work is completed in accordance with this Agreement and work approved by the COUNTY. Retainage will be paid at the project's conclusion and proper approvals. All invoices and inspection reports must be submitted to Lexington County along with all final permits by COUNTY inspection representatives in order to receive the final retainage. Retainage will be released when awarded contract has been fulfilled in its fullest and approved by the County.

If the CONTRACTOR and his/her subcontractors' work is not completed by the ending date listed in the executed contract, the CONTRACTOR will agree to pay liquidated damages as outlined. The liquidated damages shall not apply, if one or more of the following exists: (1) extenuating circumstances beyond the control of the CONTRACTOR; (2) extreme weather delays; (3) materials and supplies delays caused by a third party supplier; (4) PROPERTY OWNER delays in removal of persons within a timely manner. The COUNTY shall make final determination whether any of these listed circumstances exist. Liquidated damages shall be \$100 per day.

4. Bonding Requirements

Bids may be subject to bonding requirements. Normally, bids exceeding \$50,000.00 require a bond. The requirement for bonds with bids less than \$50,000.00 is dependent upon the risk associated with the bid. This ensures that if the bidder attempts to withdraw after the bid is accepted, the County will not suffer loss.

The County should always consider the ramifications in deciding whether to require a bond when there is a choice. If there is substantial risk of loss, a bond should be required. The cost of bonding will undoubtedly be passed along in the contract price. Some smaller contractors may find it difficult to obtain or afford large bonds and may exclude themselves from bidding.

Surety companies authorized to do business in Lexington County should execute the bonds. Bid Bonds and Performance Bonds may include cashier's checks and /or irrevocable letter of credit.

When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the solicitation, the bid shall be immediately rejected.

A successful bidder shall forfeit any surety required by the Director of Procurement upon failure on his part to enter into a contract within ten (10) days after receipt of the contract. the award. They shall also be held liable for any cost in excess of their bid price which the County incurs in purchasing the commodities or services elsewhere.

5. Contracting with Small, Minority, Women Owned Bus.

In order to comply with 2 CFR 200.321 Lexington County will maintain a list of vendors who supply services that align with contracting needs of HOME-ARP funded projects. This list will be developed utilizing the South Carolina Division of Small and Minority Business Contracting and Certification and/or the U.S. Small Business Administration business directory. Businesses who appear to provide services which may be solicited as part of HOME-ARP activities will be included on the list and will be solicited for bids when appropriate activities requiring solicitation occur. Where practical and cost reasonable projects will be bid in smaller tasks to help support participation by smaller firms.

B. Duplication of Benefits

NOTE: The County has been working with the Subrecipient and the Subrecipient has indicated that no additional funding sources will be available for the acquisition of the shelter facility site or for construction of the NCS. Therefore, the County does not anticipate any DOB in relation to the shelter development.

Federal law prohibits any person, business concern, or other entity from receiving federal funds for any part of such loss as to which he/she has already received financial assistance under any other program, private insurance, charitable assistance or any other source. Such duplicative funding is called Duplication of Benefit (DOB) which is defined under the Robert T. Stafford Act (Stafford Act).

Pursuant to the Stafford Act, the County will establish and follow policies and procedures to uphold the safeguard against DOB within its program guidelines for each eligible activity. The County has established a framework for identifying potentially duplicative sources of funds and reducing documented duplications from potential project awards prior to any award actually being made.

Any project funded by the HOME-ARP program will undergo a DOB analysis to identify any additional funds that may be utilized with the HOME-ARP funds. Any additional funds for the same purpose will be noted and a DOB analysis will be conducted. If any funds are found to be duplicative, the County will re-evaluate the eligibility and funding needs of

that project. This will also include ensuring that a duplication in services does not take place due to other funding sources.

Funds will NOT be considered duplicative if the funds are: (1) Provided for a different purpose; or (2) provided for the same purpose (eligible activity), but for a different, allowable use (cost).

1. Applicant Based Programs

The Subrecipient may have previously received assistance from other sources for the same project. Under the requirements of “The Robert T. Stafford Disaster Assistance and Emergency Relief Act” (42 U.S.C. 5121, et seq.), as interpreted and applied by HUD, the County must take into account certain aid received by the Subrecipient, including County departments, in determining the amount of assistance which can be granted. The County will follow HUD’s Duplication of Benefits Guidance, which includes recent HUD guidance published on June 20, 2019, “Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees” DOB Notice 84 FR 28836. The following are sources of funding assistance which may be available for the project that are considered duplication of benefits, DOB, and under federal law must be deducted from the assistance provided as applicable to the HOME-ARP Program:

- Other HUD sources
- A loan through the Federal Home Loan Bank
- U.S. Department of Treasury
- Funds through other Federal, State or local agencies
- Any other funding source available to the applicant for the same purpose as the HOME-ARP grant that may duplicate assistance.

a) Federal, State or Local Assistance

Federal funding assistance, whether through loan or grant, will be determined and verified by the Program through documentation provided by the Subrecipient and a signed DOB certification. The County’s consultant will work with the Subrecipient to identify any other public funding sources being contributed to the project. The Subrecipient must provide documentation of the funds in the form of Award Letters, grant agreements, loan documents, paid receipts, cancelled checks and invoices. Documents will be reviewed by the County’s consultant before acceptance. The Program will use the documentation provided by the Subrecipient to calculate any potential DOB and adjust the final HOME-ARP amount made available to a project.

b) Private Loans

Private loans are not considered assistance and therefore are not a duplication. Private loans will be noted in DOB documentation but will not be calculated as a duplication.

2. Calculating the Amount of Assistance

The following process will be undertaken to determine DOB and final HOME-ARP award amounts. The County’s consultant and the HOME-ARP Grant Manager will be

responsible for conducting the DOB analysis. The process for calculating to total amount of assistance will involve the following:

- The County’s consultant will work with the Subrecipient to identify any funds committed to a project.
- Additional funding sources will be identified, confirmed and documented on the County’s DOB form.
- If no other funds are being committed the Subrecipient will need to sign the DOB form confirming that no other funding sources will be available except possibly as needed for cost overruns or change orders which exceed the original total estimated costs of the project.
- Any funds found to be duplicative, will be subtracted from the total project cost.
 - Only those funds which meet the applicability definition for DOB will be calculated for consideration and deduction from the estimated HOME-ARP assistance amount.
 - All funds which are found eligible for consideration will be deducted from the estimated HOME-ARP assistance amount by the County’s consultant and confirmed by the HOME-ARP Grant Manager before finalization in the file.
- Any remaining unaccounted costs are eligible for HOME-ARP funding.

Since the County anticipates the Subrecipient to use HOME-ARP money to fully fund the acquisition of the necessary shelter site and development of the NCS facility, any additional funds provided for these purposes will result in a deduction of that additional funding amount from the HOME-ARP allocation.

3. Subrecipient Responsibilities

Subrecipient will be required to sign a Duplication of Benefits Certification Form identifying and confirming any potential DOB sources, certifying the truthful provision of information and agreeing to repay any funds later found to be certified as DOB, including the following language “Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. § 287, 1001 and 31 U.S.C. § 3729.” Subrecipient must also sign a Release of Information form allowing the County to obtain information from institutions that may have provided DOB funds. Any subrecipients who are found to have received additional funds will receive a Duplication of Benefits Repay Notice from the County for funding recapture per HUD guidelines.

C. Appeals and Complaints

The goal of Lexington County is to resolve complaints in a manner that is both sensitive to the complainants concerns and to achieve fair results. Regardless of the complaint, program staff members will treat the issue with respect, be able to respond to the complainant about the complaint’s status, and handle the issue quickly, within 15 working days if practicable.

Information on how to file a complaint will be available at the program offices and is available on the HOME-ARP website.

1. Fair Housing Complaint

Persons alleging a violation of fair housing laws will be referred to Lexington County's local fair housing contact to file a complaint. Lexington County will retain a log and record of all fair housing inquiries, allegations, complaints, and referrals. In addition, Lexington County will report suspected non-compliance to HUD.

2. Informal Complaints

General complaints about the NCS project that are brought forward in an informal manner—orally or revealed in the process of addressing another issue—will be addressed where possible regardless of the source of the complaint. Informal complaints or appeals can be made by phone or in person with HOME-ARP Grant Manager at the Lexington County office located at:

County of Lexington
Community Development Department
212 South Lake Drive

When responding to an informal complaint, the county staff will obtain all pertinent information from the complainant, including the issue raised, the name of the complainant (if possible) and associated contact information, and any other information regarding the complaint. If no name or contact number is provided, then that will be noted and placed in an informal complaint file—either electronic or hard copy. This communication will indicate that the complainant was notified of how to file a formal complaint.

3. Formal Complaints

Formal complaints must be submitted in writing or via email to the Lexington County Community Development Department.

Any complaint that does not include the contact's name and associated contact information will not be treated as a Formal Complaint. Any complaint forwarded to Lexington County from the U.S. Department of Housing and Urban Development (HUD) will also be considered a written complaint and forwarded to the Community Development Department.

Complaints may be submitted in the following ways:

Mail:

Lexington County
Community Development Department
212 South Lake Drive
Lexington, SC 29072

Email: LexCo_HOME-ARP@tetrattech.com

Hand Deliver:

Lexington County
Community Development Department
212 South Lake Drive
Lexington, SC 29072

4. Required Documentation

Every Formal Complaint will be entered into the project tracking system and maintained as either an electronic or hard copy file. The project tracking system will note any complaints and their potential resolution. Once the complaint is entered in the tracking system, the HOME-ARP Grant Manager or their designee will determine if the complaint has standing by determining the following:

- The Complainant is a local resident, actual or potential resident of the NCS, Subrecipient staff or direct party.
- Associated contact information has been provided.
- The complaint is relevant.

If the complaint is valid, the HOME-ARP Grant Manager or a designee will perform the following steps:

- Review and/or investigate the complaint.
- Once the complaint has been resolved, or if it needs more work than can be done at the local program level, refer the complaint to the HOME-ARP Grant Manager to seek resolution.
- Provide documentation regarding the final result and resolution to Lexington County if applicable.
- Provide a copy of this Policy relating to investigation and resolution to the Complainant and to each person who is subject of the complaint.
- Notify the Complainant of the results, or if longer than 15 days, provide a status of the review process.
- Close the complaint.

5. Appeals

Throughout the process, decisions will be made on an application and/or project to be delivered. The decisions are made based on statutes, codes of federal regulation, local administrative code, state and local guidelines as they are interpreted by the program. This policy guides the process for a complainant appealing decisions made by the program staff.

Appeals Policy:

- 1) *Grounds to Appeal a decision.* This appeal process is available to an Appealing Party under the following ground:
 - a. In response to the County’s decision on a previously filed complaint.
 - b. One of the inputs that influences the Award Determination, such as DOB
 - c. Scope of Work
 - d. Quality of Construction
 - e. Wage compliance
 - f. NCS residency approval
- 2) A Complainant must submit a Formal Appeal Form within:
 - a. 15 days from the date of the Award Letter or Ineligibility Letter; or
 - b. 10 days from receipt of the Scope of Work; or
 - c. 10 days from a wage compliance decision made by the County
 - d. 5 days from receipt of County’s decision on a previously filed complaint.
 - e. 3 days from interim or final inspection approving quality of construction.

Appeals must be submitted in written form or via email. Any appeal that does not included the contact’s name and associated contact information will not be recognized as an acceptable appeal. Any appeal must originate from a person attempting to register with the program with standing in the program as a subrecipient, contractor, or other direct party.

Appeals may be submitted in the following ways:

Mail:

Lexington County
Community Development Department
212 South Lake Drive
Lexington, SC 29072

Email: LexCo_HOME-ARP@tetrattech.com

Hand Deliver:

Lexington County
Community Development Department
212 South Lake Drive
Lexington, SC 29072

- 3) A Contractor may only appeal the issues related to one of more of the following:
 - a. Draw payment

- b. Failure to meet benchmark construction deadlines
 - c. Wage determination
- 4) *Appeal of Local Program Decision.* An Appealing Party must submit an appeal in writing or via email to the Community Development Department to request an appeal review by the Community Development Director. The appeal must be submitted within (10) ten days from date of the staff response to original complaint. This request should be sent to the Lexington County, Community Development Department, 212 South Lake Drive Lexington, SC 29072.

The written appeal must include specific information relating to the challenge of the staff decision. The appeal and the Application file shall be made available to the Community Development Director upon receipt of an Appeal. The Community Development Director shall respond in writing to the Appeal not later than fifteen (15) working days after the date of receipt of the Appeal. The response may take one of the following actions:

- a. Concur with the Appeal and make the appropriate adjustments to the staff's decision; or
- b. Disagree with the Appeal and provide the basis for rejecting the Appeal to the Appealing Party.

6. Filing

Additionally, a copy of the grievance and response will be maintained in the complainant's file. If the grievance has been forwarded to Lexington County by HUD, the County's response to the grievance shall be copied and emailed to HUD.

7. Complaints to HUD

Persons not satisfied with the County's complaints and appeals process may present their written grievance or objection to the HUD area office:

U.S. Department of Housing and Urban Development Community Planning and Development Division

**1835 Assembly Street,
13th Floor
Columbia, South Carolina 29201**

D. Financial Management

1. Allowable Costs

All costs will be reviewed by the HOME-ARP Grant Manager. All internal costs will be submitted by the HOME-ARP Grant Manager for formal processing by Procurement (with department head approval). This includes any costs incurred from other departments including finance, legal, etc. who may have incurred costs as part of regular administration and implementation of HOME-ARP program. The HOME-ARP

Grant Manager will verify that costs are applicable, eligible and reasonable for HOME-ARP. Any internal costs being submitted by HOME-ARP Grant Manager must include a description indicating the purpose of the costs. Additionally, all contractor invoicing must be reviewed and approved by HOME-ARP Grant Manager for applicability, eligibility and reasonableness before being forwarded for processing. Any concerns or clarification regarding any costs will be addressed and resolved by the HOME-ARP Grant Manager before being submitted for processing.

2. Banner System

Banner is the software system of record being utilized by the County for tracking and managing County finances. To maintain accuracy and manage security within the Banner system, all Banner users have their own passwords. In addition, any individual in the County who is not a staff member of the finance or procurement departments have read-only account access. To move funds within the system an ABT (administrative budget transfer) needs to be submitted by the HOME-ARP Grant Manager, with approval from a department head. The ABT is forwarded to finance, who will process it in Banner with approval from the County of Lexington Administrator.

When funds need to be allocated for projects, the HOME-ARP Grant Manager will create a purchase requisition that will be forwarded to Procurement (with department head approval). Procurement generates a purchase order in Banner which commits the funds. Once invoices are submitted, the HOME-ARP Grant Manager will review and approve the invoice and then send to procurement (with department head approval). Procurement will forward the approved purchase order to finance to process the check and record the transaction through Banner.

All financial transactions use a Fund – Organization – Account coding. The fund indicates the Special Revenue Program or Grant Program. The organization indicates the County department. The account indicates the specific detailed line item.

All budgets, revenues (including program income and interest), obligations, expenditures, and available balances are recorded and able to be viewed in Banner. Each revenue and expenditure has their own account number that can be easily tracked. The grant number, award amount, and CFDA number are included on every draw and are maintained in the financial records. They are also included on the Single Audit.

3. Invoice Payments

All invoices/payment requests are received and/or routed to the HOME-ARP Grant Manager to be logged in an invoice/payment request log. This log is an excel sheet divided by tabs named after the HOME-ARP funded programs.

- Upon receipt of invoice, the invoice is stamped and marked by the HOME-ARP Grant Manager with the date it was received, the Purchase Order number, and the account number of the vendor or individual property.
- Any needed corrections from the vendor will be communicated electronically by the HOME-ARP Grant Manager to the vendor.

- If no revisions are needed the invoice is recorded in the information in the respective program spreadsheet.
- The HOME-ARP Grant Manager will highlight and make notes by line item to indicate which IDIS activity the expenditure meets.
- The invoices then are signed verifying review and approval. It is then provided to the Community Development (CD) Director for final review and signature by the Grant Manager.
- Upon review and final signature from the CD Director, the invoice/payment request is returned to the HOME-ARP Grant Manager for final processing (Banner and IDIS).
- The HOME-ARP Grant Manager will make a copy of the invoice/payment request and retain it in the file “Pending Payment in Banner” and the original is delivered (via hand) to Procurement.
- The Financial Coordinator will check Banner for payment regularly. Once paid, a voucher is created by the Financial Coordinator and all supporting documents are then sent to Finance for draw down approval and submittal.
- All invoices will be paid out within 30 days of payment request.
- Payment requests are drawn in IDIS by the HOME-ARP Financial Coordinator within 45 days of payment request.
- A draw down log sheet is created and signed and submitted to Finance along with supporting documentation.
- A Finance representative signs off on the draw down log sheet for approval.
- HOME-ARP Grant Manager receives an EDI Payment Detail Report from Finance confirming payment.
- Vouchers are then filed sequentially.

4. IDIS Voucher process

For all steps below, it is presumed that the HOME-ARP Grant Manager and/or Grant Assistant will be carrying out these activities:

- Gather all PAID invoices for reimbursement to the County. These should already be set aside in the “Paid – Pending IDIS Drawdown” folder.
- Obligate funds to an activity.
- HOME-ARP Financial Coordinator creates a voucher to drawdown funds for one or more activities.
- The drawdown request is generated, IDIS will perform a preliminary validation to ensure that sufficient funds are available. If yes, IDIS will generate a Voucher Number.
- A representative from Finance in the “Drawdown Approver” role then reviews and approves each voucher line item (or the entire voucher). If the voucher has

multiple line items, the Drawdown Approver can approve some line items and reject the others or leave the rest for a later date.

- IDIS sends the approved line items to LOCCS that night (or on a future date that the Drawdown Approver specified). However, if a voucher exceeds a drawdown threshold, it is forwarded to HUD for approval before being submitted to LOCCS. At that time, the HOME-ARP Grant Manager must also send their CPD Representative additional supporting documentation to substantiate the over-threshold draw.
- LOCCS processes the vouchers overnight from a daily batch file submitted by IDIS. LOCCS approves or rejects all line items that were sent on one batch (this may not be all line items if the approver did not approve all line items on the voucher the same day). If approved by LOCCS, LOCCS sends the line items to the U.S. Treasury for payment. LOCCS also sends the status of the request back to IDIS. The drawdown results are reflected in IDIS the next day.
- Once received by Treasury, if Treasury accepts, electronic payment is made to the County.

5. Single Audit Report and Comprehensive Annual Financial Report (CAFR)

In order to comply with Federal Register VOL 84, No 169 V.A.1.a.(1)(a), Lexington County, with the help of its HOME-ARP Consultant, will submit to HUD annually a comprehensive annual financial report which includes an Independent Auditor's report at the end of each fiscal year. In order to prepare for this final annual report, the County, along with the help of its HOME-ARP Consultant will consolidate these reports quarterly, or as needed. Any material weaknesses or deficiencies identified by HUD in the annual report, or by the County or its HOME-ARP Consultant in the quarterly report will be immediately addressed. In response to the identified material weakness or deficiencies, the County, with the help of its HOME-ARP Consultant, will develop a plan that either removes the identified weaknesses or addresses them.

6. Program Income Reporting & Tracking

This project does not anticipate generating any program income.

The Waivers and Alternative Requirements for Implementation of the HOME American Rescue Plan (HOME-ARP) Program defines Program Income as:

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME-ARP funds. When program income is generated by housing or shelter that is only partially assisted with HOME-ARP funds, the income shall be prorated to reflect the percentage of HOME-ARP funds used. Program income includes, but is not limited to, the following:

- (1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME-ARP funds;
- (2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME-ARP funds, less costs

incidental to generation of the income (Program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or State recipient);

- (3) Payments of principal and interest on loans made using HOME-ARP funds;
- (4) Proceeds from the sale of loans made with HOME-ARP funds;
- (5) Proceeds from the sale of obligations secured by loans made with HOME-ARP funds;
- (6) Interest earned on program income pending its disposition;
- (7) Any other interest or return on the investment of HOME-ARP funds permitted under §92.205(b) or the HOME-ARP Notice; and,
- (8) Any operating cost assistance or replacement reserve funds returned to the participating jurisdiction after the required compliance or use period, in accordance with the HOME-ARP Notice.

Based on the previous definition and the County's current Action Plan, the County does not anticipate generating program income. However, should program income be generated, the County will track the receipts within the County's financial records through Banner and deposit the funds in the County's HOME-ARP account local account. All program income received prior to grant closeout shall be utilized for additional eligible HOME-ARP activities. Any program income remaining after the HOME-ARP program closeout will be returned to the HOME Investment Trust Fund Treasury account. The County maintains HOME entitlement staff who are familiar with managing IDIS and tracking and accounting for program income.

E. HUD Monitoring

Lexington County will submit to monitoring of its activities by HUD as necessary to ensure that HOME-ARP funding is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the HOME-ARP Grant Agreement. Lexington County will work with HUD staff in preparation of any program monitoring. The County will work to collect any documents or information HUD may need during monitoring to support an efficient and informative monitoring process. The County will make program staff available during HUD monitoring and will provide HUD staff with access to all program files and documents.

Please reference the Record Management and Document Retention section of this document of this document for information on document management.

F. Communication

Lexington County staff will maintain consistent and concise communication with the HUD POC. It is the goal of this program to respond to RFIs, provide reports, and maintain communication requirements in a timely and efficient manner.

A contact list of stakeholders will be maintained along with communication requirements for those stakeholders. Communicating with stakeholders effectively, such as HUD, will be key to the success of this program as deliverables are identified and requirements defined by the various stakeholders involved in the program.

During active HUD monitoring the main point of contact for Lexington County will be the HOME-ARP Grant Manager. They will work directly with HUD staff or their consultants. The County's HOME-ARP consultant will be integral during HUD monitoring in providing support for the County and working with HUD staff and its representatives.

G. IDIS Management

HUD utilizes a specific online database system, Integrated Disbursement and Information System, more commonly referred to as IDIS, for its nationwide reporting system. Use of this system is required by all HOME-ARP grantees.

Changes and amendments to projects/programs will be recorded in IDIS. Any changes to the Action Plan (AP) will be accounted for in the IDIS Action Plan as well as the formal Action Plan which was previously submitted to HUD for review and approval. Changes to the IDIS Action Plan will only take place after the changes have been approved by HUD in the formally submitted AP. Additionally, programmatic changes and revisions, accomplishment recordation and reporting will be managed through IDIS. Any changes or updates required in IDIS will occur within five business days of the changes being approved by the HOME-ARP Grant Manager or, as in the case of AP amendments, within five days of HUD approval.

The HOME-ARP Grant Manager, in coordination with the County's HOME-ARP consultant, will manage all updates, revisions and reporting requirements necessary for IDIS programmatic compliance. The County will ensure staff has adequate training and that consultants have adequate knowledge and IDIS familiarity for the effective management of the IDIS Database.

1. QPRs

The County is required to complete Quarterly Performance Reports or QPRs in the IDIS system. QPRs are due 30 days after the end of each calendar year quarter. Once approved by HUD, the County will publish all QPRs on its HOME-ARP website.

A quarterly performance report (QPR) will be submitted to HUD no later than 30 days following the end of each quarter after grant award and continuing until all funds have been expended and all expenditures have been reported.

H. Internal Conflict of Interest

Conflict of interest situations will be closely monitored, as these situations, if not properly addressed may result in:

- 1) Loss of HUD funding
- 2) Voiding any contract funded or supported by HUD

- 3) Disgoring of any financial gain or benefit received
- 4) Abstaining from participating in a decision-making capacity
- 5) Termination, resignation, or loss of position
- 6) Imposition of civil and/or criminal activities

It shall be a breach of ethics for any employee of Lexington County to participate directly or indirectly in procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement, a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement, or any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

No conflict of interest shall exist for any member of the evaluation panel, i.e.,

- (1) Part ownership in any company submitting an offer;
- (2) family member works for or has part ownership in any company presenting an offer; and
- (3) any other reason a member of the evaluation panel can't give an impartial evaluation.

SC Code § 8-13-700 (2013) prohibits any public official, public member, or public employee from knowingly use his or her official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated or be involved in any way attempt to use his office, membership, or employment to influence a governmental decision that benefits the aforementioned.

1. Internal Conflict of Interest Mitigation

Lexington County shall ask several questions of individuals associated with the procurement process:

- 1) Are any employees or board members:
 - a. a County employee or consultant who participates in decision-making or exercises influence over the decision-making process of County HUD sponsored programs as part of their position?
 - b. a member of any committee, commission or board that will approve and/or administer expenditure of HUD grant funds or approve a sponsored project or fund recipient?
 - c. a County Council member?
- 2) Are immediate family members or business associates of employees or board members:

- a. a County employee or consultant who participates in decision-making or exercise influence over the decision-making process of the County HUD sponsored programs part of their position?
 - b. a member of any committee, commission or board that will approve and/or administer expenditure of HUD grant funds or approve a sponsored project or fund recipient?
 - c. a County Council member?
- 3) Will any employees or board members receive a financial interest or benefit from HUD grant funds (other than employee salaries or personnel benefits)? Will any immediate family members or business associates of employees or board members receive a financial interest or benefit from HUD grant funds (other than employee salaries or personnel benefits)?
- 4) To my knowledge, will programs or projects have a financial effect on a County official or employee who exercises HUD sponsored program-related functions, or an immediate family member or business associate of such person? For example, will any of these persons be receiving rental payments, other business income, or program services from my program? Or, for example, do any of these persons own real property near the program or project site, and is it likely that my program or project will have an effect on neighboring real property values?

If the answer is “yes” to any of these questions, it is possible that there may be a conflict of interest.

2. Remedies and Sanctions

If a contract awardee fails to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the improper conflict situation, the County may suspend payments for HUD related activities, terminate the contract, require reimbursement by the recipient to the County or to HUD of any amounts already disbursed, and/or bar future HUD funded related work.

A number of penalties may be imposed, or remedies, cures, waivers and exceptions may be pursued in the event an actual conflict of interest exists. Early disclosure of an actual conflict of interest or potential conflict of interest is critical and may influence the penalty imposed and/or remedy sought. The ultimate disposition depends largely on the nature, extent and severity of the conflict. The evaluation of an actual conflict of interest is fact sensitive and each case requires examination on the merits.

3. *Guidance*

If a conflict of interest is identified or suspected, covered person(s) shall immediately provide written notification to the Lexington County Department of Community Development. At minimum the written notification shall include documentation of the following:

- Disclosure of the identity of the covered person(s) involved.
- When and how it was discovered.
- The nature of the conflict of interest.
- The financial interest or benefit derived or to be derived from the Lexington County HUD sponsored program or funding.

The covered person(s) shall cooperate fully with the County staff and promptly provide any additional information requested by Lexington County to evaluate the conflict of interest.

Lexington County will evaluate the circumstances of the conflict of interest and notify HUD of its findings, and if applicable, a request that HUD grant an exception to the conflict of interest regulations.

I. **Internal Monitoring**

The HOME-ARP Grant Manager, in coordination with the County's HOME-ARP consultant, will perform an internal review of the Non-Congregate Shelter Development project on a monthly basis. This will include reviews of actions taken, communication, invoicing, record keeping, progress tracking and compliance review. The monitoring activities will specifically focus on the following items:

- Site/property identification
- Property acquisition
- Contractor Procurement
- Construction
- Resident applicant intake by subrecipient
- Support services
- Closeout
- Ongoing compliance

The HOME-ARP Grant Manager, with support from the County's HOME-ARP consultant, will monitor all contractors including direct review and approval of all contractor invoices. County staff or the County's HOME-ARP consultant, will conduct periodic on-site monitoring and a County Building Inspector will conduct inspections during project construction. In addition, the HOME-ARP Grant Manager will oversee subrecipient compliance, file management, and record keeping. The HOME-ARP Grant Manager and/or County's HOME-ARP consultant will provide oversight for communications and

interactions between the Subrecipient and contractors to help ensure programmatic compliance and the timely completion of the project. The HOME-ARP Grant Manager, with support from the County's HOME-ARP consultant, will also manage the public reporting requirements.

Internal monitoring procedures effectively:

- Gauge the overall progress and effectiveness of program implementation.
- Identify and resolve compliance issues that may compromise program integrity, funding, and service delivery.
- Identify areas that would benefit from technical assistance.
- Differentiate the types of monitoring techniques that will be used during the monitoring review process.
- Explain the current monitoring structure model.
- Identify the role of the Internal Auditor and the Internal Monitor along with their essential assigned responsibilities.

The HOME-ARP staff and its consultant have established a weekly meeting to review the status of all HOME-ARP funded projects and programs. These meetings can include non-HOME-ARP County staff members to provide additional oversight and transparency regarding the implementation and management of the program. The meetings serve several critical functions which include:

- Updating program and County staff on the status of individual projects.
- Review of the financial status of the program.
- Discussion of concerns or challenges, current or anticipated.
- Allowing staff to discuss implementation to ensure program consistency.
- Ongoing compliance oversight and updates.
- Provides opportunities for the team to be updated on discussions or directions from HUD.
- Allows the team to identify issues or concerns which may need to be presented to HUD for consideration.
- Help in the prevention of fraud, waste, and abuse.

J. Record Management and Document Retention

Lexington County will maintain records via individual project files for all projects undertaken with HOME-ARP funds. Programs which involve multiple projects through an applicant intake process will maintain individual case files to be developed and maintained by case management staff. Lexington County shall maintain accurate files and records on each applicant and shall retain all pertinent documentation for the grant. Compliance will be maintained in accordance with the reporting requirements under the

HOME-ARP regulations. These files will record and maintain documentation for the following items:

- Subrecipient review
- Environmental review
- Procurement
- Invoicing and payment
- Change orders
- Local regulatory compliance (permitting, legal review, etc.)
- Program income
- Close out

All files will be maintained in a secured online database and office within the County administrative building with limited access only to program staff and administrators. Case management staff will provide daily maintenance and follow-up on individual cases.

Projects which don't involve individual applicant case management, such as infrastructure or public facility projects, will have project files developed and maintained for each project. These files will be maintained by the HOME-ARP Grant Manager and kept in a secured database and physical location in the County administrative office. These files will maintain documentation for the following items:

- Environmental review
- Procurement
- Invoicing and payment
- Change orders
- Local regulatory compliance (permitting, legal review, etc.)
- Program income
- Close out

The HOME-ARP Grant Manager will provide oversight and maintenance over these records and will review the progress and records of any active projects as well as those that have yet to begin to ensure they are progressing in a timely manner.

Information maintained in project records will provide necessary data to complete reports and will be utilized during audits and monitoring to provide information needed as part of these activities. Information included in files may be supplemented with financial reports in order to provide concise details regarding specific project financial records. Once the HOME-ARP program has fully expended all funds and the program is closed, records will be transferred to the Community Development/Grants offices for security. All records will be maintained for a minimum of five years.

1. Internal Controls

Lexington County has existing policies and procedures meeting financial management requirements including:

- applicable regulations and requirements
- financial accountability and records
- authorized signatures for payments and checks
- requests for payments
- bank accounts and checks
- escrow accounts
- administrative costs
- property management
- audit requirements

The county has cash management procedures in place that minimize the elapsed time between receipt and disbursement of HOME-ARP funds.

The organizational structure encompasses risk management measures that establish clear lines of authority and approval, segregation of duties, separation of key processes and authorization and secure access to financial resources.

In summary, Lexington County's internal controls are set up for responsible management of HOME-ARP funds and support the prevention of fraud, waste and abuse to ensure:

- No person involved in the program decision-making obtains financial benefit.
- No single-point sign-off of significant transactions.
- Separate recordkeeping for mitigation funds versus general accounting operations.
- Reconciliation of accounts performed by employees not responsible for handling payroll preparation and issuance of paychecks.
- Hiring procedures match required financial skill sets to position descriptions.
- Policies and procedures are in place to maintain effective control and accountability for all cash, real and personal property and other assets.
- Policies and procedures are in place for controlled access to assets and sensitive documents.
- Reasonable measures are in place to safeguard protected personally identifiable information (PII).
- No personally identifiable information shall be reported in IDIS or any other documentation submitted to HUD

The HOME-ARP staff have established a weekly meeting to review the status of the program. These meetings may include non-HOME-ARP County staff members to provide additional oversight and transparency regarding the implementation and

management of the program. The meetings serve several critical functions which include:

- Updating program and County staff on the status project.
- Review of the financial status of the program.
- Discussion of concerns or challenges, current or anticipated.
- Allowing staff to discuss implementation to ensure program consistency.
- Ongoing compliance oversight and updates.
- Provides opportunities for the team to be updated on discussions or directions from HUD.
- Allows the team to identify issues or concerns which may need to be presented to HUD for consideration.
- Help in the prevention of fraud, waste, and abuse.

2. Internal Auditing

Lexington County will conduct annual auditing activities as part of its standard annual auditing process. The County hires an independent auditor who provides both programmatic and financial oversight of the HOME-ARP program. The role of the independent internal auditor will be to conduct internal monitoring/audits throughout the year of County administered HOME-ARP programs and activities as required by HUD guidelines and P.L. 115-123. The role of the independent auditor is to conduct internal monitoring/audits of County administered programs as directed. In addition, the internal auditor will assist in the detecting of fraud, waste, and abuse in the HOME-ARP program.

The internal auditor plays an important role in looking for errors and instances of malfeasance for procurements and program delivery as part of the County's administration of its HOME-ARP funds. The internal auditor verifies that the County has in place procedures to perform price and cost analyses of proposed expenditures of grant funds and that analyses are performed, when required.

The internal auditor evaluates documentation maintained by the County, regarding price and cost analyses, and verifies that it includes evidence that all costs are allowable, allocable and reasonable.

The internal auditor is responsible for preparing a report that describes all internal control activities, its testing of those controls, and any concerns or issues noted during its review. This report is prepared annually and submitted to the County's Department of Community Development for review. The report will include a Schedule of Expenditures as described under 2 CFR 200.510(b). Since audits will be conducted annually, audit requirements under 2 CFR 200.501 will be addressed regardless of the amount of funds expended by the program. All audits will be conducted in accordance with 2 CFR 200 Subpart F, and will conform to the scope described in 2 CFR 200.514.

As necessary, the Community Development Department, along with its partners, develops an appropriate corrective action plan to strengthen the controls that mitigate

and address concerns or findings noted in the internal auditor's report. Documentation is required to ensure that corrective action has taken place prior to closing out concerns or findings.

The internal auditor will ensure no personally identifiable information reported in IDIS and assist in the detection and prevention of fraud, waste, and abuse. This individual will be responsible, if requested by HUD, to submit internal audit reports directly to HUD, to include a copy of the conflict of interest policy and the process for promptly identifying and addressing any identified conflicts. This individual will also provide to HUD information on how the grantee will verify the accuracy of information provided by applicants.

The County follows the 'Disciplinary Policies and Procedures' section of the County of Lexington Employee Handbook. If found to be criminal, the County Sheriff is contacted. Instances of fraud, waste, and abuse will be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

K. Timely Expenditure of Funds

Per Federal Register Notice 84 FR 45838, HOME-ARP funds must be expended by September 30, 2030. The County of Lexington will review in-house expenditures and beneficiary expenditures to ensure that funds are spent on eligible costs and in a timely manner. Project funds and schedules will be monitored by The County of Lexington's Finance Department, the Department of Community Development and the County's Grants Department, and ultimately audited through the County's independent audit function.

The County of Lexington will require Subrecipients to hold all contractors accountable through the establishment of benchmarks and other critical milestones. Contractors will be required to provide detailed reports concerning expenditure of funds and project progress to the County upon request. Frequency of reporting will be established on a per project basis given the potential varied nature of eligible activities that the County may choose. It is expected that the County will require contractors to provide monthly reports; however, due to the varying nature of each project, specific projects may be asked to provide those project updates more frequently.

The County expects, at this time, that it will directly administer all HOME-ARP programs and will use contractor augmentation to execute implementation. When contracting with vendors, the County will establish certain benchmarks that must be achieved prior to the release of funding. As a part of their contractual obligations to the County, contractors will be required to present the County with a plan on how they will implement procedures to reach the determined benchmarks. Each contract with contractors will require that penalties be implemented for failure to reach benchmarks. In addition to ensuring that contractors are meeting project timelines, these benchmarks will allow the County to project expenditures for each individual project. The following chart provides an estimated time frame of expenditures for each of the identified programs.

Phase	Begin	End	Comments
Implementation Plan and P&P Development	8/1/2022	4/30/2023	Ongoing updates
Site Identification and Acquisition	1/1/2023	4/30/2023	Ongoing
Environmental Review and Assessment	4/1/2023	8/1/2023	Ongoing
Procurement	8/1/2023	10/1/23	
Construction	10/1/2023	4/30/2025	
Occupancy	5/1/2025	6/1/2025	
Supportive Services	5/1/2025	8/1/2025	
Closeout	8/1/2025	9/1/2025	
Ongoing Compliance	9/1/2025	Ongoing	See section V. M

1. Contractor Payments

In order to ensure contracts and bills are paid in a timely manner, payments pursuant to a successful contract will be made within thirty (30) days of receipt of a detailed monthly invoice unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. Contractor shall provide complete cooperation during any such investigation. Invoice shall be for services rendered for the period of the first day of the month through the last day of the month. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. Suppliers should keep the Procurement Department advised of any changes in their remittance addresses.

2. Tracking Payments

The County, with the help of its HOME-ARP consultant, will maintain a payment tracker for each project being conducted under the HOME-ARP program. This payment tracker will include indicators to show, at minimum, invoice submission status and date, approved change orders, total payments per project by dollar amount, and total eligible funds per project. This will be updated as soon as any changes to the status of payments, change orders, or invoice submissions occur.

3. Slow Performing Projects

Projects which appear to be slow-performing will be evaluated and addressed consistent with the County's HOME-ARP Action Plan and Policies and Procedures. Projects which appear to be stalled will be:

- a) provided technical assistance to remediate their slow progress state,

- b) terminated if the project appears to be stalled at startup and the Action Plan allows for identification of a new project for re-allocation to other eligible project(s) or,
- c) the project scope will be reduced and funding reduced as necessary and recaptured funds will be re-obligated to other eligible projects and recipients.

If the project is stalled due to contractor negligence or mismanagement as defined by the HOME-ARP Grant Manager in coordination with the County's Procurement Department, liquidated damages may be imposed on the contractor at a rate of \$100 per day. As with the County's existing CDBG Program, the focus will be on identifying fast-moving projects and recipients that have already demonstrated competence in expeditiously moving projects forward, drawing funds and moving projects toward completion.

L. Fraud Waste & Abuse

Lexington County's internal controls are set up for responsible management of HOME-ARP funds and support the prevention of fraud, waste and abuse to ensure:

- No person involved in the program decision-making obtains financial benefit.
- No single-point sign-off of significant transactions.
- Separate recordkeeping for mitigation funds versus general accounting operations.
- Reconciliation of accounts performed by employees not responsible for handling payroll preparation and issuance of paychecks.
- Hiring procedures match required financial skill sets to position descriptions.
- Policies and procedures are in place to maintain effective control and accountability for all cash, real and personal property and other assets.
- Policies and procedures are in place for controlled access to assets and sensitive documents.
- Reasonable measures are in place to safeguard protected personally identifiable information (PII).

Additionally, internal auditing will be conducted on a regular basis as described in the Internal Auditing section of the document, to help prevent, identify and remedy any issues relating to fraud, waste and abuse.

1. Vendors

Lexington County staff will verify the accuracy of information provided by its vendors.

Prior to contract execution, the county's procedures include, but are not limited to,

- Reviewing debarment lists.
- Searching known databases for information.
- Conducting internet research, and obtaining information available from State and Federal agencies, such as substantiated investigative findings and audit

reports.

The County staff have established regular channels of communication with other State and local government agencies who are contracting with various entities for services relating to storm recovery efforts in order to be on guard for issues relating to contractor fraud, waste, and abuse. Findings are reported to county procurement staff.

2. Inter-Department Coordination

Effective coordination between County departments and personnel enables all programs, vendors administering county programs, and departments to comply with applicable local, state and federal regulations, prevent and minimize fraud, waste and abuse, and effectively fulfill the goals set forth by the county.

The Community Development Department, in conjunction with Procurement, and Finance, perform the following tasks:

- Gauge the overall progress and effectiveness of project implementation.
- Identify issues that may compromise program integrity, fund, and service delivery.
- Work with program and operational staff to implement corrective action and resolutions.
- Oversee the implementation of the County's recapture process.
- Provide information and input on how County programs and practices can be improved and enhanced to improve performance and efficiency, and to curtail waste, fraud, and abuse
- Serve as a layer of oversight to mitigate any potential risks, proactively detect and investigate potential fraud, and identify areas in which to strengthen program capacity and the quality of service delivery.

The HOME-ARP staff have established a weekly meeting to discuss and review all aspects of the program and its current status. These meetings include HOME-ARP staff, HOME-ARP consultants and include other County staff as needed. This is designed to provide as much transparency as possible and to allow County staff outside of the program to ask questions or address concerns they may have regarding the program and its management and implementation. These meetings primarily serve to provide a comprehensive status update for all team members, coordinate program implementation, and to review and address any compliance concerns.

M. Labor Compliance

As a HOME-ARP Grantee, the County is required to administer and enforce the labor standards requirements set forth in Davis-Bacon And Related Acts (DBRA).

1. Davis-Bacon And Related Acts (DBRA) Overview

The Davis-Bacon and Related Acts (DBRA) apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the

construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

The Davis-Bacon Act (DBA) directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the “Related Acts,” under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. If any portion of a contract requires DBA, then all work performed under the contract is subject to DBA.

Additionally, contractors must comply with the Contract Hours and Safety Standards Act (CWHSSA) and the Copeland Anti-Kickback Act (Copeland Act). CWHSSA requires that, for any project in which the prime contract exceeds \$100,000, workers be paid one-and-one-half times their normal hourly rate for any hours worked in excess of 40 hours weekly, based on a work week of seven (7) consecutive days.

The Copeland Act prohibits any person from inducing a worker on a federally funded project to give up any part of the compensation to which the worker is entitled. No payroll deductions are permitted that are not specifically listed in the Copeland Act unless the contractor has obtained written permission from the employee as specified in 29 CFR 3.5 for otherwise permissible payroll deductions.

The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

DBRA requires payment of prevailing wages and the certification and submission of weekly payroll reports for each week work is performed at the site of the covered work.

2. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of federally assisted construction contract must include the equal opportunity clause in accordance with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375 and implementing regulations at 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

3. Contract Work hours and safety standards (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704. Less than 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in

surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Applicability to HOME-ARP Projects

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government construction projects in excess of \$2,000. Specifically, for HOME-ARP program projects, Davis-Bacon Related Acts will apply when:

- HOME-ARP pays in whole or in part for any direct costs of construction;
AND the project meets one of the following thresholds:
 - Residential (housing): Property has 8 or more units
 - Non-residential: Any construction work valued at more than \$2,000

Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works Davis Bacon does not apply to the residential buyout program Work done by a local government's employees (force account) is not subject to DBA.

5. Labor Standards Enforcement

The County is responsible for enforcement of the DBRA requirements, including on-site interview of workers, review of contractor's payrolls, and conducting a pre-construction conference. In order to meet these requirements, the County will have construction monitors that are responsible for end-to-end management of the process to include the following:

- Developing pre-bidding requirements and contractual templates to meet all HOME-ARP Construction and Labor Standards (which include Davis Bacon Wage Rates). All bid specifications include all applicable Federal and State wage rate determinations and the required labor standards provisions.
- Conducting pre-bid conferences with potential contractors to review Davis Bacon wage rates, payroll and reporting requirements. The pre-bid conference will also outline all job site posters related to labor standards, safety, and applicable wage rates in English and Spanish. The "Contractor Guide to Davis Bacon Wage Requirements and Certified Payroll Reports" will also be provided to potential bidders.
- Verifying contractor eligibility.
- Executing construction contracts.
- Conducting pre-construction conferences and notification of construction start.
- Monitoring compliance, including conducting construction site visits, worker interviews (at least once during the construction process), weekly payroll review, including the collection and prompt examination of weekly certified contractor payrolls, and implementing corrective actions.

- Coordinating the retention of certified payrolls for three (3) years by the County or other Funded Entity following completion of the project. Payrolls may then be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding.
- Section 3 outreach and reporting.
- Review of all Contractor requests for payment and draw request preparation.
- Ensuring restitution of laborers not properly compensated on a project, if applicable.

6. Fair Labor Standards Provisions

Fair Labor Standards Provisions are outlined in detail in the excerpt below.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(i)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act) daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

7. Construction Categories

As required by DBA, the County categorizes construction work as residential, building, heavy or highway work. Wage decisions are based on the category (or categories) of work to be performed. Each construction contract to which DBA applies contains the wage decision(s) for the appropriate category (or categories) of work. A separate wage decision for a category is not required if the value of work (as bid) in that category does not exceed 20 percent of the total “as bid” construction cost. The actual bid cost, not the estimated project cost, determines whether a separate wage decision is used. If more than one wage decision is used, payrolls must reflect which wage decision is applicable unless all workers are paid at least the highest hourly rate possible under either wage decision.

8. Monitoring Construction Activities and Labor Standards

During project construction, the County monitors compliance with DBA, CWHSSA and the Copeland Act by reviewing contractor and subcontractor payrolls. DBA applies to laborers and mechanics working on any project when the primary contract exceeds \$2,000. It does not apply to supervisory staff if 80 percent of their time during the work week is spent performing supervisory duties. Supervisory personnel who fall below the 80 percent threshold are subject to DBA for non-supervisory hours worked during that particular work week.

“Self-employed owners” are not exempt from DBA and must submit a payroll report reflecting the hours worked on the project, the type of work performed and that they are the owner of their business. Hourly rates need not be reported if this information is not known, but the amount of the subcontract should be indicated.

Supply contracts are not subject to DBA. A supply contract is one that furnishes equipment, materials or supplies, with no (or only “incidental”) construction activities performed at the project site. Construction is “incidental” if it does not exceed 13 percent of the contract or subcontract price. The County collects documentation to support this percentage.

During project construction, the County conducts interviews with the contractors’ and subcontractors’ workers to verify the accuracy of payroll information. Interviews cover a representative sample of each classification used by the contractor/subcontractor. On-site interviews are conducted whenever possible, but mail interviews may be used if on-site interviews cannot be performed. Discrepancies between information gained in the interviews and payroll data are resolved in a timely manner. Additionally, interviews and resolution of discrepancies are conducted in such a manner as to shield the identity of the worker(s).

Any corrective actions by a contractor must be documented in the project files. For back wages over \$10, there must be a copy of the front of the wage restitution check and a signed acknowledgment from the worker stating the amount of the check and that it was received. If there are overtime violations, the County assesses the contractor liquidated damages of \$10 per day/per worker for those who should have received overtime. Restitution is also required. The contractor may request waiver of liquidated damages through the County.

The County will monitor labor compliance for the following items:

- Ensuring payroll information is being submitted and reviewed in a timely manner.
- Ensuring all labor classifications are included in the wage decision or have been confirmed and/or added with County approval.
- Ensuring trainee and apprentice labor classifications are applied in accordance with regulations for those titles.
- Ensuring signed authorizations are on file for any employees with “other” payroll deductions.
- Ensuring interviews have been conducted with the prime contractor’s and any subcontractor’s employees. HUD Form 11 can be used for interviews.
- In the case of multiple wage decisions, investigating payrolls to ensure that they distinguish which was applied to each worker.
- Posting the wage-rate decision in a conspicuous location at the project site and posting a copy of “Notice to All Employees Working on Federal or Federally Financed Construction Projects”.

9. The Wage Request Process

This process may begin before or after the environmental review of the project. Where, Program staff prepare:

- Wage decision(s) from the U.S. Department of Labor website.
- Program staff review and approve the wage decision document.
- Program staff provide a copy for the grant file and provide the subrecipient with a copy of the applicable wage determination document along with other labor compliance material (see section V. K).
- If the wage decision changes, the program staff sends a letter to the subrecipient notifying the subrecipient of the change in the wage decision.
- The subrecipient must notify all potential bidders of a wage determination that occurs 10 days prior to bid opening. If a contract has been awarded but construction has not been initiated within 90 days of the award, the contractor must be notified and adhere to the modified wage decision.

10. Labor Standards Enforcement File

The County maintains a "Labor Standards Enforcement" file for each construction project subject to labor standards provisions. All documentation is available for HUD review. Documentation includes requests for wage decisions, bid documents containing applicable wage decisions and labor standards provisions, verification of contractor eligibility, executed construction contracts containing applicable wage and labor standards provisions, pre-construction conference minutes, notification of start of construction, weekly payrolls, apprentice registration records, on site employee interviews and copies of correspondence, memoranda and forms relating to the administration and enforcement of labor standards provisions.

11. Environmental Review Requirements.

All federally funded projects (e.g. CDBG, HOME, ESG, Public Housing Programs, Choice Neighborhood Initiative, SHOP, Disaster Grants, EDI SP grants, etc.) are subject to environmental review under the National Environmental Policy Act of 1969 (NEPA) and other provisions of the law that further the purposes of NEPA as specified in Title 24 Part 58.5. Lexington County is responsible for meeting federal environmental review requirements using the criteria and statutory authorities specified in the HUD regulations 24 CFR Part 58 and for more complex projects, using procedures from the National Environmental Protection Act (NEPA).

Detailed information regarding all of HUD's environmental review requirements including the regulations, suggested environmental review formats and sample notices, FAQ's, HUD's Environmental Online Review System (HEROS), and the HUD environmental staff for each Region, can be found on HUD Exchange Environmental Review website (see link below).

<https://www.hudexchange.info/programs/environmental-review/>

The following policies are intended to give detailed, step-by-step guidance in carrying out the environmental review function in the administration of the grant programs. References, information sources, and suggestions on timelines are based on experience in Lexington County and may not be applicable elsewhere.

a) Purpose

The purpose of these environmental procedures is to ensure that all projects funded with federal funds are in compliance with all applicable federal laws and authorities identified in Title 24 Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Also, these procedures are intended to ensure a suitable living environment, or more specifically, to determine if any significant environmental impact may occur as a result of a proposed project; to release funds to support eligible projects that neither harm nor are harmed by the environment; to safeguard, enhance, and restore the environment; and to foster public participation in the development decision-making process.

b) Project Review

All projects and programs are subject to an initial environmental review. Projects which are not site specific will have a tiered review format with site specific reviews occurring once specific programmatic applications have been completed and accepted.

Under HUD rules, even if federal funds support only a portion of the project, the full project and its impacts must be examined before any funds are obligated or expended. In addition, even if a governmental agency or private independent firm has already conducted some other form of environmental review, the county's Environmental review staff must determine and document that the review meets the HUD requirements except in the case of CDBG-DR projects which may waive specific components or processes as described in its Federal Register notice (see HUD memo Adoption of FEMA and Other Federal Environmental Reviews and Processing for Hurricane Sandy Supplemental Appropriation (H.R. 152) Activities date March 4, 2013).

c) *Environmental Review Staff*

Lexington County has secured the services of a consultant to provide environmental review services for all of its HOME-ARP funded projects. The consultants also assist in HOME-ARP programmatic implementation, maintenance and compliance to allow for a seamless process between application intake and management and the environmental review process. If/when the consultant is no longer in service to Lexington County the county will either make efforts to secure another consultant to assist with environmental review responsibilities or take it upon itself to absorb all environmental review tasking and activities.

The County's environmental review staff will conduct the environmental review or otherwise determine and document that the environmental review requirements have been met. Even if a federally funded activity is considered Exempt or Categorically Excluded Not Subject to (CENST) the laws and authorities under the HUD rules, the environmental review staff must provide a detailed project description that outlines why the activity meets the criteria, document compliance with the laws and authorities at 58.6, and maintain an environmental review record (ERR) for that activity (see **HUD Websites**).

d) *Environmental Review Record*

The Environmental Review Specialist must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The Environmental Review Specialist must use the current HUD recommended formats (or develop equivalent formats).

The ERR shall contain all the governmental review documents, public notices and written determinations or environmental findings required by 24 CFR Part 58 as evidence of review, decision making and actions pertaining to a particular project of a recipient.

As appropriate, the ERR shall:

- (1) Describe the project and activities the recipient has determined to be part of the project;
- (2) Evaluate the effects of the project or the activities on the human environment;
- (3) Document compliance with applicable status and authorities, in particular those cited in Section 58.5 and 58.6; and
- (4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact)
- (5) Document compliance with applicable status and authorities, in particular those cited in Section 58.5 and 58.6; and

(6) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact)

The ERR shall also contain as appropriate, verifiable source documents and relevant base data used or cited in EAs, EISs, or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspections by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

e) Glossary of ER Terms

Activity: An action that a grantee or recipient puts forth as part of an assisted project regardless of whether it's to be borne directly by the HUD assistance or imparted by another funding source.

Certification: Environmental certification including HUD form 7015.15, containing a statement forwarded to HUD along with the RROF/C and the FONSI certifying to HUD that Lexington County has satisfied its responsibilities under the National Environmental Policy Act of 1969 and other related laws and authorities.

Certifying Officer: The official authorized to execute the Request for Release of Funds and Certification with the legal capacity to carry out the responsibilities of §58.13 of the federal regulations.

ERR: Environmental Review Record, an instrument documenting compliance with the environmental review requirements of NEPA and/or 24 CFR 58.

EIS: Environmental Impact Statement, (under NEPA) a detailed examination of the proposed project, the environment of the proposed project, and the relationship between the two.

FONSI: Finding of No Significant Impact, a statement forwarded to HUD finding that the proposed project (including mitigating measures) will not adversely affect or be affected by the environment.

NEPA: The National Environmental Policy Act of 1969.

NOI: Notice of Intent, as in Notice of Intent to Request Release of Funds (NOI/RROF).

Project: An activity, or group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

Program: A combination of specific activities, usually containing several specific related projects, which are managed as a single larger process. This may also include soft activities which are providing services for a specific objective.

Responsible Entity: The unit of general local government whose jurisdiction contains the project sites.

ROF (ATUGF): Authorizing Use of Grant Funds. (Form HUD 7015.16)

RROF/C: Request for Release of Funds and Certification (Form HUD 7015.15), a statement forwarded to HUD with the FONSI (see definition above) certifying that the environmental review is complete and requesting that funds for the proposed action be released to carry out the project.

Section 106 Review: This review is an integral part of environmental review under 24 CFR 58.5 and **(Historic Properties)** NEPA which determines whether a federally permitted, licensed, or funded project affects any historic resources and if so, how to minimize any negative effects. The Section 106 consultation is mandated by The National Historic Preservation Act of 1966, as amended.

Tiering: Conducting an environmental review in steps, commencing with a general review of the whole project, in which the ERR includes stipulated requirements for certain compliance to occur at a later time and certain documents to be attached to the ERR when it is practical to do so.

Any projects or programs which may contain a variety of unidentified sites will be subject to a tiered review. This will include a Tier 1 broad, programmatic level review as well as a Tier 2 site specific review as sites are identified. The Tier 1 evaluation will consider the intent and anticipate the activities involved in the project or program. This review will also establish the process to be followed in the site-specific review and identify the issues to be considered in site specific reviews.

The Tier 2 review will evaluate specific sites as they are identified. The Tier 2 review will only address the issues identified in the Tier 1 review. Any findings or Requests for Release of Funds submitted in the Tier 1 review will be applicable to site specific projects unless the Environmental Officer, or their representative, determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. Any Tier 2 review which does not meet the determinations of the Tier 1 programmatic review will need to be addressed separately and will require its own FONSI and RROF as needed based upon the final determination of the review.

ABBREVIATIONS

CDBG: Community Development Block Grant

EA: Environmental Assessment

EPA: Environmental Protection Agency

ERR: Environmental Review Record

HUD: Department of Housing and Urban Development

NEPA: National Environmental Policy Act of 1969

HOME: Home Investment Partnerships Program

VIII. Attachment #1 - County Procurement Policy

ORDINANCE NO. 18-08

Pursuant to the authority granted by the Constitution of the State of South Carolina and General Assembly of the state of South Carolina, be it enacted by the Lexington County Council:

ARTICLE VII. PROCUREMENT

Sec. 2-331. - Purpose of article.

The purpose of this article is to secure for the county taxpayers the advantages and economies which will result from centralized control over the expenditures of county funds for supplies, materials, equipment and contractual services; from the application of modern, business-like methods to such expenditures; and from better utilization of the articles procured at public expense.

Sec. 2-332. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agency and using agency mean any of the departments, offices or other organizational units of the county government, and any special district whose affairs and funds are under the supervision and control of the county council and for which the county is ex-officio the governing body.

Bidders' list means a current listing of sources of supply of articles for each category of commodities repetitively purchased for county use.

Contractual services means any and all telephone, gas, water, electric light and power services; towel, window washing and cleaning service; the rental of equipment and machinery; and all other types of agreements under which the contractor provides services which are required by the county government but not furnished by its own employees; provided, however, that contractual services shall not include legal advertising, and purchases of space for legal advertising shall not be subject to the provisions of this article.

Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or other similar capabilities.

Electronic agent means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

Electronic record means a record created, generated, sent, communicated, received, or stored by electronic means.

Electronic signature means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Irresponsible bidder means a bidder or prospective bidder who fails to furnish, upon written request, proof of his responsibility; who has, as a vendor or contractor with the county, repeatedly made slow or unsatisfactory deliveries; or who has violated, or attempted to violate, the provisions of this article.

Professional services means the service of attorneys, physicians, architects, engineers, consultants or other individuals or organizations possessing a high degree of technical skill.

Responsible bid means an offer submitted by a responsible bidder in ink or typewritten form, or electronically, to furnish supplies, materials, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other requirements included in the solicitation.

Responsible bidder means a bidder who submits a responsible bid; who has furnished, when requested, information and data to prove that his financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the supplies, materials, equipment or contractual service on which he proposes or bids; and who has not violated, or attempted to violate, any provisions of this article.

Supplies, materials and equipment means any and all articles or things which shall be furnished to or used by any agency, including any and all printing, binding, or publication of stationery, forms, laws, journals and reports, but excluding services or materials furnished in kind, in lieu of cash to indigents.

Sec. 2-333. - Powers and duties of county Procurement Director.

Principal public procurement official. The Procurement Director shall serve as the principal public procurement official of the County and shall be responsible for the procurement of supplies, services, and construction in accordance with this article.

Duties. In accordance with this article, the Procurement Director shall:

- (1) Purchase all supplies, materials, equipment and contractual services required by the agencies in amounts or estimated amounts of \$25,000.00 or less; and submit to the county administrator for award, and thereafter execute contracts for all purchases of supplies, materials, equipment and contractual services in amounts or estimated amounts greater than \$25,000.00 and less than \$50,000.00; and submit to the county council for award and thereafter execute contracts for all purchases of supplies, materials, equipment and contractual services in amounts or estimated amounts in excess of \$50,000.00. In order to procure supplies, materials, equipment and services in such a manner as to promote competition while considering the administrative cost of such procurements, the following methods of source selections are described:
 - a. *Small purchases.* Repetitive type items can be procured on an informal basis addressing competition as follows:
 1. Purchases not exceeding \$1,500.00 no competition required if price is deemed fair and reasonable;
 2. Purchases of \$1,501.00 to \$5,000.00 require two verbal or written bids; or

3. Purchases of \$5,001.00 to \$25,000.00 require three written quotes by qualified bidders.
 - b. *Competitive sealed bidding.* Procurements above \$25,000.00 shall be based upon formal bid requirements for which bid specifications can be developed to ensure adequate competition. Competitive sealed bids shall be used in accordance with section 2-338(a). An award shall be made to the lowest responsive and responsible bidder.
 - c. *Competitive sealed proposals.* Procurements can be made by competitive sealed proposals that are highly technical, complex in nature and do not lend themselves to formal competitive sealed bidding. Competitive sealed proposals shall be used in accordance with section 2-338(b). An award shall be made to the offeror whose proposal is considered to be most advantageous to the county.
 - d. *Sole source procurements.* A procurement can be made from a sole source without competition based upon a written determination, approved by the county administrator, that there is only one source for the required supply, service or equipment.
- (2) Negotiate contracts for professional services and submit them for approval and award as provided in subsection (1) of this section;
- (3) Use standard specifications wherever they are applicable to purchase orders and contracts; and ensure compliance with such specifications through adequate inspection of deliveries;
- (4) Transfer between agencies supplies, materials and equipment which are no longer needed by a holding agency but which can be used by the receiving agency;
- (5) Exchange, trade in or sell those supplies, materials and equipment which are surplus, obsolete or unused and which are found by the county administrator not to be required for public use;
- (6) Develop, with the approval of the county attorney as to legal sufficiency, standard forms and conditions of invitations to bid and purchase orders and contracts; develop, and prescribe the use by agencies of other forms required in carrying out the provisions of this article; and amend or eliminate any such forms;
- (7) Upon request of the county council, and subject to its approval of each transaction, perform all delegable functions in connection with acquisition and disposal of real property;
- (8) Purchase, or perform other supply functions prescribed in this article, when requested to do so by school districts, special districts or other governmental units of the county whose affairs and funds are exempt from the supervision and control of the county council;
- (9) Ensure procurement information is public record to the extent required by S.C. Code 1976, § 30-4-10 et seq. (the Freedom of Information Act), with the exception that commercial or financial information obtained in response to a request for proposals which is privileged and confidential need not be disclosed;

- (10) Where a procurement involves the expenditure of federal assistance or contract funds, the Procurement Director shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in the article;
- (11) Ensure the provisions of S.C. Code 1976, § 8-13-100 et seq. (State Ethics Act) are complied with in all actions involving the procurement of supplies, services or construction for the county;
- (12) Report any collusion or other anticompetitive practices suspected among any bidders or offerors to the state attorney general;
- (13) Promulgate regulations concerning vendor or contractor complaints or grievances. The regulations shall provide for a complete and unbiased hearing of vendor complaints and grievances within a reasonable time period. Complaints and grievances that are not resolved satisfactorily by the Procurement Director may be reviewed by the county administrator or by persons designated by the county administrator; and
- (14) Promulgate regulations concerning debarment or suspension of vendors. The decision to debar or suspend shall not be made without allowing the vendor reasonable opportunity to present information concerning the debarment or suspension to the Procurement Director and/or the county administrator.

Sec. 2-334. - Procedural regulations.

- (a) The county Procurement Director is hereby authorized to prepare procedural regulations to amplify the provisions of this article; to submit such regulations and amendments thereto to the county administrator for approval; and to promulgate and enforce compliance with such regulations, including, but not limited to:
 - (1) The procedure for handling solicitation responses, including their custody and safeguarding; opening and tabulation; rejection and readvertising; and the procedure for determining the lowest responsible bidder;
 - (2) The procedure for securing from bidders and prospective bidders the data necessary to determine whether or not they are responsible;
 - (3) The procedure for inspection of deliveries of supplies, materials, equipment and contractual services;
 - (4) The procedure for reporting receipt of deliveries of supplies, materials, equipment and contractual services;
 - (5) The procedure for submitting requisitions for the supplies, materials, equipment and contractual services required by the using agencies;
 - (6) The procedure for making emergency purchases; and
 - (7) Such matters as may be necessary to give effect to provisions of this article and any amendments thereto.

- (b) A copy of such regulations and procedures shall be available in the county Procurement Director's office and shall be open to public inspection during regular business hours and available online.

Sec. 2-335. - Exemptions from centralized purchasing.

With the approval of the county administrator, the county Procurement Director may, and where legally required to do so, shall authorize, in writing, any agency to purchase or contract for certain specified classes of supplies, materials, equipment or contractual services, independently of the county Procurement Director's office; but such purchases or contracts shall be made in conformity with the applicable provisions of this article. The county Procurement Director may also rescind such authorization to purchase independently, by written notice to the agency or agencies concerned unless otherwise prohibited by law. The following supplies and services shall be exempt. Additions and deletions shall be made by regulation:

1. Utility services;
2. Postage stamps and postal fees;
3. Works of art and one-of-a-kind items, such as paintings antiques, sculptures, and similar objects for museum and public display;
4. Published books, maps, periodicals, technical pamphlets, and other such materials;
5. Professions dues, Membership fees, and similar registration fees;
6. Professional training;
7. Articles for commercial sale by all governmental bodies.

Sec. 2-336. - Emergency purchases.

- (a) An emergency procurement shall be authorized only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions; a breakdown in machinery or an essential service occurs; or when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work; and provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- (b) If an emergency occurs during regular business hours, the head or designee of the using agency shall immediately notify the Procurement Director who shall either make the purchase or authorize the using agency to do so. If the Procurement Director is unavailable, the head of the using agency shall notify the county administrator before making the purchase. If an emergency occurs at times other than regular business hours, the using agency may purchase directly the commodity or commodities required. If the estimated cost of the emergency purchase exceeds \$1,500.00, the head of such agency shall, whenever possible, secure competitive telephone bids and order delivery to be made by the lowest

responsible bidder. On every emergency purchase made, the Department Head shall, not later than forty-eight (48) hours thereafter, submit to the Procurement Director a requisition, a tabulation of bids received, if any, a delivery receipt and a written explanation of the circumstances of the emergency. The record of such emergency transactions shall be open to public inspection during regular business hours. All emergency transactions shall be signed off by the County Administrator.

Sec. 2-337. - Requisitions and estimates of future requirements.

- (a) All agencies shall submit to the County Procurement Director requisitions for the supplies, materials, equipment and contractual services as required for their operations and for the purposes and within the limits of funds appropriated therefor. The County Procurement Director, after reviewing any such prices, may require from the head of the requesting agency a justification of the quantity or quality requisitioned.
- (b) All agencies shall also file with the County Procurement Director estimates of their requirements for supplies, materials, equipment and contractual services in such form, at such time, and for such future periods as the County Procurement Director shall prescribe.

Sec. 2-338. - Methods of Source Selection for Contract, purchases and sales.

Unless otherwise required by law, all purchases of, and contracts for supplies, materials, equipment and contractual services, and all sales of personal property which have been found by the county administrator not to be required for public use, shall be based, wherever possible, on competitive bids, except as provided in Sections 2-338 (b) (Competitive Sealed Proposals) and 2-336 (Emergency Purchases).

(a) Competitive Sealed Bidding

1. **Conditions for Use.** If the amount of the expenditure for a contractual service or for a commodity, or for a class of commodities normally obtainable from the same sources of supply, or for a sale of personal property which has been found by the county administrator not to be required for public use, is estimated to exceed \$25,000.00, contract bids shall be solicited by public notice and written contracts shall be awarded. Public Notice shall be through the County website and South Carolina Business Opportunities (SCBO) website. If newspaper advertisements are employed as public notice, such notice shall include a general description of the commodities or services to be purchased or the commodities to be sold; shall state where contract bids and specifications may be secured; and shall specify the time and place for the opening of bids.
2. **Invitations for Bids.** An invitation for bid (IFB) shall be issued and shall include specifications and all contractual terms applicable to the procurement.
3. **Public Notice.** The County Procurement Director shall, in addition, solicit bids from prospective bidders for the class of commodities being purchased via electronic means.

All pending purchases or sales shall also, in all cases, be advertised by posting on the County website.

4. **Receipt of Bids.** All bids shall be submitted sealed to the county Procurement Director on the official contract bid form, furnished by the county, which will have indicated thereon the class of commodities to be purchased and the established time for opening of bids. When required, each bid shall be accompanied by surety in the form of a certified or cashier's check or bid bond in such amount as shall be prescribed in the public notice inviting bids and in the contract bid form.
5. **Bid Tabulation and Recommendation.** A tabulation of all bids received, whether accepted or rejected, shall be made available for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening. The County Procurement Director shall submit a copy of the tabulation and all bids received to the county administrator, together with his recommendation for awards. The county Procurement Director may reject any and all bids for any or all commodities or contractual services included in the bid form and may readvertise for bids when the public interest will be served thereby; but will report such action and the reasons therefor to the county administrator.
6. **Tie Bids.** If all bids received are for the same total amount or unit price, and if the public interest will not permit the delay of readvertising for bids, the county administrator may authorize the county Procurement Director to award the contract to one of the tie bidders by drawing lots in public, or to purchase the commodities or contractual services in the open market, provided the price paid in the open market shall not exceed the lowest contract bid price submitted for the same commodity or contractual service.
7. **Award.** In all other cases, the contract shall be awarded by the county administrator to the lowest responsible bidder. In determining the lowest responsible bidder, the county Procurement Director and the county administrator shall take into consideration the quality offered and its conformity with the specifications, the delivery and discount terms and conditions of the bid, the service reputation of the bidder, and other information and data required to prove his responsibility.
8. **Sales.** Contracts for personal property sales shall be awarded by the county administrator to the highest responsible bidder and shall be subject to all other applicable requirements of this section.
9. **Uniform Bidding.** It shall be the duty of the County Procurement Director to discourage uniform bidding by every possible means and to endeavor to obtain as full and open competition as possible on all purchases and sales. Accordingly, the county Procurement Director shall require each bidder to accompany his bid with a statement made under oath that he has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of such statement shall render void the bid of such bidders. Any disclosure to, or acquisition by, a competitive bidder, in advance of the opening of the bids, of the terms and conditions of the bid submitted by another competitor shall render the proceedings void and shall require readvertising for bids.

10. **Bonding.** When required, the successful bidder shall furnish surety in the form of a certified or cashier's check or bond for the diligent performance of the contract in the amount specified in the contract bid form.

(b) **Competitive sealed proposals**

Notwithstanding any other provisions of this article, competitive sealed proposals may be used in the procurement of goods, services, and construction in the manner provided in this section:

1. **Conditions for use.** When the County Procurement Director determines that the use of competitive sealed bidding in procurement of particular goods, services or construction is either not practicable or not advantageous to the County, it shall utilize the competitive sealed proposals procedure established in this section to contract and procure the particular goods, services or construction required by the County.
2. **Request for proposals.** Proposals shall be solicited from at least three (3) qualified sources, when such sources are reasonably available, through a request for proposals. A request for proposals is a written or published solicitation for proposals to provide goods, services or construction, as described therein. Evaluation factors upon which the proposals will be evaluated for award of the contract shall be stated in the request for proposals. Price shall be one (1) of the evaluation factors, but it shall not be the sole basis for award of the contract.
3. **Public Notice.** Public notice of the request for proposals shall be given at a reasonable time prior to the date set forth therein for the receipt of proposals. Such notice shall include utilization of bidder's list, SCBO, and County website.
4. **Receipt of proposals.** Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for proposals. Only the names of the offerors may be disclosed at the proposal opening. Contents of the proposals shall not be disclosed during the negotiation process. Proposals shall be open for public inspection after contract award, except that proprietary or confidential information in any proposal that is clearly marked "confidential" by the offeror shall not be disclosed without written consent of the offeror.
5. **Evaluation Factors.** The request for proposals shall state the relative importance of price and of each other evaluation factor and shall require numerical weighing of each factor. The evaluation factors shall be examined with respect to each proposal in determining which proposal is most advantageous to the County. There are no restrictions on the kind or number of evaluation factors that may be used, as long as they are stated in the request for proposals and relate to the purpose of the procurement.
6. **Negotiation with responsible offerors and revisions to proposals.** Negotiations may be conducted with any offerors submitting a proposal that appears eligible for contract award (based upon the evaluation factors) for the purpose of clarification to assure full understanding of and responsiveness to the requirements of the request for proposals. Offerors shall be accorded fair and equal treatment with respect to opportunity for discussion and revision of proposals. Revisions in proposals may be permitted after their submission and prior to contract award for the purpose of obtaining best and final offers.

In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

7. *Award.* Award shall be made to the responsive offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the other evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weightings specified for each factor in the request for proposals. If the Procurement Director or its designee should determine that none of the proposals are advantageous to the County, the County shall have the absolute right to reject any and all proposals. The contract file shall contain the basis on which the award is made and be sufficient to satisfy external audit.
 8. *Negotiations after unsuccessful proposals.* When the price of all proposals received pursuant to a request for proposals appears to be unreasonable, or the price of the lowest proposal exceeds available funds as determined by County Council or its designee, and time or other circumstances do not permit the delay required to resolicit for competitive sealed proposals, a contract may nevertheless be negotiated, provided that:
 - a. Each offeror who submitted a proposal under the original solicitation is notified and given reasonable opportunity to negotiate; and
 - b. The negotiated price must be within the limits of available funds as determined by County Council or its designee.
- (c) *Contracts.* If the successful bidder does not enter into a contract within ten (10) calendar days after receiving of notice of award of contract, he shall forfeit in cash an amount equivalent to the amount of any surety which accompanied his bid, unless the County is responsible for the delay. The bidder shall also be held liable for any cost in excess of the bid price which the County incurs in purchasing the commodities or services elsewhere.

All contract bid forms and all contracts shall be approved by the county attorney as to form and legality. Following such approval, all contracts shall be signed in behalf of the county by the county Procurement Director. Contracts shall be maintained in the procurement office and the finance department shall be made aware of the terms of each contract.

Sec. 2-339. - Open market purchases and sales.

- (a) If the amount of the expenditure for a contractual service or for a class of commodities normally obtainable from the same sources of supply, or for a sale of personal property which has been found by the county administrator not to be required for public use, is estimated to be less than \$25,000.00, it shall be an open market transaction and shall not be subject to the sealed bid requirements of section 2-338.
- (b) The Procurement Director may solicit quotes by direct mail or electronic mail requests to prospective bidders for the class of commodities being purchased by posting a copy of such request for quote on County website and SCBO, or quotes may be solicited by telephone. No competition is required for purchases not exceeding \$1,500.00 if the price is fair and

reasonable. Purchases in amounts between \$1,501.00 to \$5,000.00 require two verbal or written quotes. Purchases in amounts between \$5,001.00 to \$25,000.00 require three written quotes.

- (c) The county Procurement Director shall have available all written and telephone quotes, and such records shall be open to public inspection during regular business hours for at least 30 days after the transaction award date.
- (d) All open market purchases shall be awarded to the lowest responsive/responsible bidder and all open market sales shall be made to the highest responsive/responsible bidder.
- (e) Notwithstanding any other provisions of this article, if the expenditure for purchase of supplies, materials, equipment or contractual services or for a sale of personal property which has been found by the county administrator not to be required for public use is less than \$5,000.00, the county Procurement Director, in his sole discretion, may waive the competitive bidding requirements of this article and may make such purchase or sale without calling for quotes. The county Procurement Director shall not delegate to any other county officer or employee the discretion of determining whether a purchase or sale involving an expenditure of less than \$5,000.00 shall be based on competitive quote. However, price and quality being equal, preference may be given to responsible local bidders.

Sec. 2-340. - Types of contracts and purchases.

- (a) It shall be the responsibility of the county Procurement Director to:
 - (1) Reduce, to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of agencies for common use items or items repetitively purchased, to include annual open orders that no single transaction exceeds the \$1,500.00 threshold;
 - (2) Develop and use those types of contracts and purchase orders which will reduce to the minimum the accompanying paperwork and which, in other respects, will be most advantageous to the county; and
 - (3) The greatest extent possible, to make full utilization of the purchasing services provided by the State Procurement Office, Federal GSA contracts, other procurement coops and other local government entities.
- (b) In carrying out the provision of subsection (a) of this section, the county Procurement Director is authorized to prescribe in the procedural regulations adopted pursuant to section 2-334 the use of various types of contracts and orders including, but not limited to, the following:
 - (1) Definite quantity contracts, whereby the contractor agrees to furnish a specified quantity of supplies, materials or equipment at a specified time.
 - (2) Indefinite quantity contracts, whereby the county agrees to obtain from the contractor all its requirements for specified supplies, materials or equipment in an estimated but indeterminate amount during a prescribed period of time at a definite unit price or at a specified discount from list or posted prices.

- (3) Price agreements, whereby the contractor agrees to supply the county requirements for items, such as replacement parts for different makes of mechanical or automotive equipment during a prescribed period of time and within a designated geographical area of the county at a definite unit price or at a specified discount from list or posted prices.
- (4) Order books to be prenumbered and issued by the county Procurement Director in pocket size to properly authorized officials, for use in securing over-the-counter delivery of miscellaneous hardware, repair parts and similar items when the need arises in the vicinity of a source of supply. The use of such orders shall be limited to purchases in amounts not to exceed \$200.00. All such orders shall be issued without regard to the requirements of section 2-342 for availability of funds. All order books and all order blanks shall be properly accounted for by the official to whom they have been issued.

Sec. 2-341. - Purchase of patented or proprietary articles.

- (a) When the county requires supplies, materials or equipment which are produced by only one manufacturer, the county Procurement Director shall specify such manufacturer's make or brand in the invitations to bid and shall obtain competitive bids from authorized dealers or distributors of such manufacturer. If such manufacturer is the sole bidder and sole source of supply, the county Procurement Director is authorized to negotiate an open market order or contract with the manufacturer at prices and on terms most advantageous to the county.
- (b) When the county requires supplies, materials or equipment which are patented or proprietary and which are obtainable in two or more equally satisfactory and competitive makes, brands or types, the county Procurement Director shall list such acceptable and competitive makes, brands or types in the invitations to bid. Such lists shall also include the phrase "or equal" to permit bidders to bid on alternate or additional makes, brands or types. It shall be incumbent on each such bidder to prove to the satisfaction of the county that the alternate or additional make, brand or type which he offers is equal in quality or performance to those listed in the invitation to bid.
- (c) When the county requires supplies, materials or equipment which are patented or proprietary and are not obtainable in other competitive makes or brands, it is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or when prequalification of products is necessary to support a specific need of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience; and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. The determination for the use of a proprietary specification shall be made in writing and submitted with the requisition, and must be included in the procurement file.

Sec. 2-342. - Availability of funds.

Except in emergencies as defined in section 2-336(a), no notice of award of contract shall be issued, no contract shall be signed, and no open market purchase order shall be issued, until the Chief Financial Officer and/or Procurement Director shall have certified that the unexpended balance in the appropriation or appropriations concerned is sufficient to defray the amount of such contract or purchase order.

Sec. 2-343. - Unlawful purchases.

- (a) If any agency purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of this article, such purchase order or contract shall be void and of no effect. The head of the agency making such purchase transaction shall be personally liable for the amount of such purchase order or contract, and, if already paid for out of county funds, the amount thereof may be recovered in the name of the county in an appropriate action therefor.
- (b) It shall be unlawful for any agency to split its requirements for supplies, materials, equipment and contractual services into estimated amounts of less than \$15,000.00 25,000.00 in order to evade the provisions of section 2-339.

Sec. 2-344. - Personal purchases.

Purchases of supplies or equipment for the personal use of an official or employee of the county shall be made by the county Procurement Director, or by an agency to which he has voluntarily given an exemption in accordance with section 2-335, only when the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such county official or employee.

Sec. 2-345. - Gratuities.

- (a) The acceptance of any gratuity in the form of cash, merchandise or any other thing of monetary value by an official or employee of the county from any vendor or contractor shall be deemed to be a violation of this article, and shall be cause for removal or other disciplinary action.
- (b) The offer of any gratuity to an official or employee of the county by any vendor or contractor, or prospective vendor or contractor, shall be cause for declaring such individual or firm to be an irresponsible bidder and for possible debarring him from bidding, as provided by section 2-346.

Sec. 2-346. - Debarment of irresponsible bidders.

The county Procurement Director may determine and declare a bidder to be irresponsible for the reasons cited in the definition of the term "irresponsible bidder" found in section 2-332 and section 2-347; may remove his name from the bidders' list; and may debar him from bidding for a reasonable period, or not less than one year. Such debarred bidder shall be furnished with a statement of the reasons therefor.

Sec. 2-347. - Inspection.

- (a) The receiving agencies and County departments shall inspect deliveries of supplies, materials and equipment or the furnishing of contractual services to ensure their conformance with the specifications set forth in the purchase order or contract.
- (b) Any agency which has the necessary facilities and staff for adequate inspection may be authorized and directed by county council, on the recommendation of the county Procurement Director, to inspect deliveries made to other agencies.
- (c) The county Procurement Director shall have authority to require chemical and physical tests of samples submitted with solicitation responses and samples of deliveries to the extent necessary to determine their quality and conformance with the specifications. For such tests, the county Procurement Director shall have authority to make use of laboratory facilities of any agency or to engage the services of any outside laboratory.

Sec. 2-348. - Storerooms.

The county warehouse supervisor shall operate central stores/warehouse which contains common use items. He shall be charged with safekeeping, proper storage and handling of all supplies, materials and equipment therein. He shall maintain a perpetual inventory system showing the quantitative amounts and monetary value. A fixed asset inventory of each department shall be conducted annually. Operating procedures for the central stores/warehouse operation will be prepared for control and safeguarding of supplies, materials and equipment in the central warehouse, including the maintenance of a perpetual inventory system showing the quantitative amounts and monetary values of the inventories.

Sec. 2-349. - Surplus, obsolete and waste commodities.

- (a) All agencies shall submit to the county Procurement Director at such times and in such form as he shall prescribe, reports showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out or scrapped. The county Procurement Director shall have authority to transfer any such commodities which are usable to another or other agencies in lieu of filling requisitions for the purchase of new and additional stock of the same or similar articles.

- (b) The county Procurement Director shall have authority to sell all such supplies, materials and equipment which cannot be used by any agency or which have been found by the county administrator not to be required for public use; or to exchange or trade in such articles in part or full payment for new supplies, materials or equipment of a similar nature. Any such sale, exchange or trade in shall be made in accordance with section 2-338 or 2-339, whichever is applicable.
- (c) The county sheriff's department shall be responsible for the sale of all confiscated equipment, automobiles, bikes, etc., pursuant to applicable state law. However, upon request of the sheriff's department, the Procurement Director may sell such confiscated property during any auction sale being sponsored by the county.

Sec. 2-350 – Electronic Procurement and Commerce


- (1) **Electronic Procurement** - The Procurement Director may participate in securing goods and services by means of electronic procurement. Examples of this type procurement may include but not limited to:
 - a) Reverse Auction – bids are permitted until the lowest bid is identified
 - b) Acceptance of solicitation response electronically
 - c) Establish a chat room for meeting of bidders/proposers
 - d) Establish a FAQ site which relates to a specific solicitation
- (2) **Electronic Record** – An electronic record is deemed to be secure if:
 - a) It is created by application of a security procedure that is commercially reasonable and agreed to by the parties;
 - b) The electronic record can be verified not to have been altered since a specific point in time
- (3) **Electronic Signature** – An electronic signature is deemed to be secure if:
 - a) It is created by application of a security procedure that is commercially reasonable and agreed by the parties;
 - b) The electronic signature can be verified by use of a procedure that is recognized and approved by the parties;
 - c) When not previously agreed to by the parties, the electronic signature is:
 - i. Unique to the party using it; and,
 - ii. Capable of identifying such parties; and,
 - iii. Created in a manner or using a means under the sole control of the party using it; and
 - iv. Linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated.
- (4) **Electronic Commerce** – The Procurement Director may participate in securing goods and services through means of electronic commerce whereby quotes and solicitations for the purchase of goods and services is done through business's electronic store.
- (5) **Security of Records** – All records received electronically will be maintained electronically in a secure location and retained in original format.

NOW, THEREFORE BE it ordained by the Lexington County Council as follows:

Provision in any other County Ordinances in conflict with this ordinance are hereby repealed.

This Ordinance shall be effective upon its enactment.

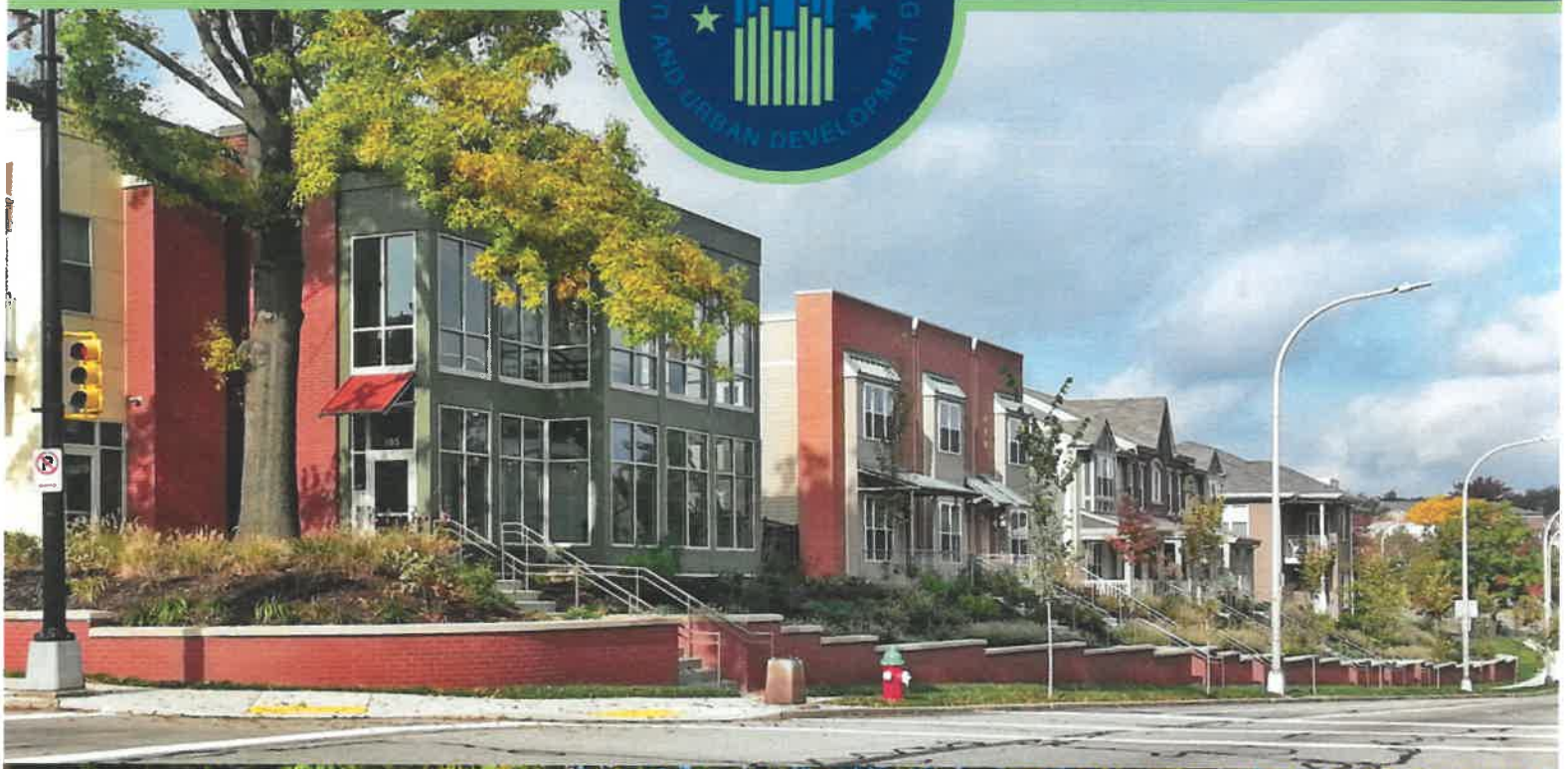
Enacted this 9th day of October, 2018.


Debra B. Summers
Chairman, Lexington County Council

ATTEST:


Diana W. Burnett, Clerk

First Reading: July 24, 2018
Public Hearing: August 28, 2018
Second Reading: September 25, 2018
Third & Final Reading: October 9, 2018
Filed W/ Clerk of Court: October 10, 2018



DAVIS-BACON AND LABOR STANDARDS AGENCY/CONTRACTOR GUIDE



INTRODUCTION

This Guide has been developed as part of HUD’s communications strategy with its approximately 5,000 client agencies, and contractors performing work on construction projects that are assisted by the U.S. Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide does not address contractor requirements involved in direct Federal contracting where HUD or another Federal agency enters into a procurement contract. While the guidance contained in this Guide is generally applicable to any Davis-Bacon-covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

This Guide has been designed to help agencies develop organizational and administrative policies that will enable them to meet labor standards contractual responsibilities in the administration of HUD-assisted programs as efficiently as possible. It is also useful as a training tool and a ready reference for compliance staff. Further, it may be used by contractors to provide further background. While this Guide is intended to address numerous situations, it was not written to cover every possible labor standards issue. If there is a labor standards issue not addressed in this Guide, please contact your local HUD Labor Standards Specialist (LSS). Throughout this Guide, the acronym “LCA” or “LCAs” shall mean state, tribal, and local agencies.

This Guide also provides information to assist with Davis-Bacon labor standards compliance. HUD’s Office of Davis-Bacon and Labor Standards worked with the U.S. Department of Labor’s Wage and Hour Division to ensure that the labor standards provisions required to be incorporated in Davis-Bacon contracts and the specifics of complying with them represent the latest information. The U.S. Department of Labor (DOL) has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

This Guide contains five main chapters. The first chapter includes basic DBA definitions that affect every Davis-Bacon-covered project. The second chapter lists the responsibilities of state, tribal, and local contracting agencies that administer HUD programs. The third chapter includes the laws and regulations associated with Federal labor standards administration and enforcement. The fourth chapter describes LCA flexibility for labor standards responsibilities. The fifth and final chapter discusses payroll compliance reviews and corrections.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. If you need assistance in determining whether Davis-Bacon wage rates apply to a project or if you need other related technical assistance, please contact the HUD Labor Standards Field staff for your area. If you do not know which staff to contact, a list of Labor Standards field offices with their geographic areas, telephone numbers and email addresses are located on HUD’s Home Page at the address below.

RESOURCE

Visit the Office of Davis Bacon and Labor Standards online:

www.hud.gov/program_offices/davis_bacon_and_labor_standards



KEY LABOR STANDARDS OBJECTIVES OF THE GUIDE

The Office of Davis-Bacon and Labor Standards has identified five Key Labor Standards Objectives—the basics of what must be accomplished in order to protect workers’ rights. We also identified all the policies, procedures, and paperwork at our disposal—what we do ourselves and what we impose on contractors. HUD eliminated superfluous requirements and will not institute policies, procedures, or paperwork that is not required by statute or regulation, or that does not contribute to one or more of the Key Objectives.

Apply Davis-Bacon requirements properly

Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.

Through education and advice, support contractor compliance with labor standards

Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.

Monitor contractor performance

Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.

Investigate probable violations and complaints of underpayment

Thoroughly explore any evidence of violations, especially allegations of underpayment.

Pursue debarment and other available sanctions against repeat labor standards violators

Carry out a zero tolerance policy toward contractors who violate prevailing wage laws.

RESOURCE

Program technical guidance

For interpretations of program requirements or handbooks and instructions on the use of forms:

Housing Programs - See our [Contact List](#) for help.



BASIC DBA DEFINITIONS

There are several compliance principles, definitions, and interpretations that affect every Davis-Bacon-covered project.

Responsibilities of employers

All employers (contractors, subcontractors, and any lower-tier subcontractors) are required to pay all laborers and mechanics employed or working on the site of the work unconditionally and not less often than once per week the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage decision. Employers must prepare, certify, and submit weekly payroll reports reflecting all the laborers and mechanics (employees) engaged in construction on the site of the work. Employers may also be required to submit related documentation in order to demonstrate compliance.

Responsibilities of the principal (prime) contractor

The principal contractor (also referred to as the “prime contractor”) is responsible for the full compliance of all employers (itself, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project.

Prime contractor

The principal contractor.

Subcontractor

All subcontractors and lower-tier subcontractors.

Employer

Any contractor, subcontractor, or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.

To make this Guide easier to understand, the term “prime contractor” will mean the principal contractor; “subcontractor” will mean all subcontractors including lower-tier subcontractors; and the term “employer” will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

Laborers and mechanics

Those individuals whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., electrician). “Laborers” and “mechanics” include apprentices, trainees, helpers, and, for contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), watchmen and guards.

Working foremen

Foremen or supervisors that perform construction work and devote more than 20% of their time as a laborer or mechanic are treated, for labor standards purposes, as “laborers” or “mechanics” for their time spent working as a laborer or mechanic.

Exclusions

Persons whose duties are primarily administrative, managerial, or clerical are not laborers or mechanics.

Employee

Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.

Working subcontractors

Persons who perform the work of laborers or mechanics and who represent themselves to be owners of businesses, sole proprietors, or self-employed are not exempt from prevailing wage requirements. These laborers and mechanics are “employed” and are entitled to the prevailing wage for the type of work they perform, and must be reported on the payroll report for their craft, hours of work, and wages paid. For additional information, see LR-96-01, Labor Standards for Self-Employed Laborers and Mechanics.



Administrative allowances

HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following:

- Owners of Businesses Working with Their Crew
- Owner/Operators of Power Equipment
- Owner/Operators of Trucks

Apprentice

A person employed and individually registered in a bona fide apprenticeship program. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship, or with a DOL-recognized State Apprenticeship Agency (SAA). (Note that an SAA must also partner with a State Apprenticeship Council (SAC). The SAC must consist of an equal number of representatives of employer and employee organizations.)

Probationary apprentice

A person in the first 90 days of probationary employment as an apprentice in a bona fide apprenticeship program but who has not yet been formally registered in such program may be considered an “apprentice” provided that DOL or SAC has certified that such person is eligible for probationary employment as an apprentice.

Pre-apprentice

A person who is employed as a “pre-apprentice”—that is, in a preparatory position which may result in registration in an apprenticeship program—is not considered to be an “apprentice.”

Trainee

A person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the Office of Apprenticeship Training.

Prevailing wages or wage rates

Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any. “Prevailing wage” is made up of two interchangeable components: the basic hourly wage, and fringe benefits. The total of the basic hourly wage and fringe benefits comprises the “prevailing wage” obligation. This obligation may be met by any combination of cash wages and creditable “bona fide” fringe benefits provided by the employer. For example:

The Davis-Bacon wage decision requires:

Basic Hourly Rate	\$10.00
Fringe Benefits	<u>\$1.00</u>
Total Prevailing Wage	\$11.00

Employers may comply by paying:

1. \$11.00 in cash wages;
2. \$10.00 plus \$1.00 in bona fide fringe benefits; or
3. Any combination of wages and benefits that totals \$11.00 per hour.



Piece rate/piece work employees

Employees whose earnings are calculated by the amount of work produced (rather than hours worked) must receive no less than the applicable DBRA/MWD (Davis-Bacon and Related Acts/Maintenance Wage Determination) wage rate based upon the hours of work performed. The employer must divide the piece rate earnings by the actual hours worked to determine the “effective” hourly rate. The effective hourly rate must be calculated for each week’s earnings and must be no less than the applicable prevailing wage rate. It does not matter whether the effective hourly rate changes from week to week as long as the result is at least as much as the prevailing wage rate. If the effective hourly rate is less than the applicable prevailing wage rate, the employee must be compensated at the prevailing wage rate for all hours worked.

Fringe benefits

Fringe benefits may include:

- Sick, vacation, or holiday pay;
- Costs to defray expenses of apprenticeship or similar programs;
- Medical or hospital care;
- Supplemental unemployment benefits;
- Life insurance;
- Pensions on retirement or death;
- Compensation for injuries or illness resulting from occupational activity;
- Other bona fide fringe benefits; or
- Insurance to provide any of the above.

MORE INFO

In addition, fringe benefits may reflect the rate of costs to the employer that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program.

MORE INFO

Fringe benefits do not include employer contributions or payments required by other federal, state, or local law, such as FICA (Federal Insurance Contributions Act), workers' compensation, or unemployment compensation.



Overtime

Overtime (O/T) hours are defined as all hours worked in excess of 40 hours in any workweek. Where governed by Federal labor standards, O/T hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time (S/T) rate of any required fringe benefits.

Deductions

The employer may make payroll deductions as permitted by DOL regulations in 29 CFR Part 3. These regulations prohibit the employer from requiring employees to “kick back” any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement contributions, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee (which will require documentation).

Site of work

The “site of work” is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed. “Site of work” includes other adjacent or nearby properties used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided they are dedicated exclusively

or nearly so to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

Proper designation of trade

Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work they perform and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for carpenters even if they aren’t considered by the employer to be fully trained as a carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.

Split classification

Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification provided that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.





LCA RESPONSIBILITIES

State, tribal, and local contracting agencies (LCAs) that administer HUD programs agree to administer and enforce Davis-Bacon requirements as a condition for receiving HUD program assistance. LCAs have the following responsibilities:

1. Designate appropriate staff (e.g., a Contract Administrator) before the start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD Field Office of Davis-Bacon and Labor Standards.
2. Establish a construction contract management system that meets the standards of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
3. Ensure that all bid documents, contracts, and subcontracts contain the applicable Davis-Bacon wage decision and Federal labor standards provisions.
4. Ensure that no contract is awarded to a contractor that is ineligible (e.g., debarred) for Federally-assisted work.
5. Conduct on-site inspections including interviews with laborers and mechanics employed on the construction project. Ensure that the applicable Davis-Bacon wage decision, DOL's Davis-Bacon poster (Form WH-1321), and additional classifications are displayed at the job site.
6. Review certified payroll reports (CPRs) and related documentation. Identify any discrepancies and/or violations. Ensure that any needed corrections are made promptly, including the payment of wage restitution as needed, and the assessment and collection of liquidated damages, as appropriate.
7. Maintain full documentation of Federal labor standards administration and enforcement activities.
8. Refer potential criminal or complex enforcement actions to HUD, in addition to CWHSSA liquidated damages assessments for O/T violations and debarment recommendations.
9. Comply with all HUD requirements concerning statutory, program, and/or other requirements.
10. Prepare Federal labor standards enforcement reports as required in DOL regulations (29 CFR Part 5, § 5.7).



LAWS AND REGULATIONS

The Davis-Bacon Act (DBA)

The DBA, enacted in 1931, applies to contracts in excess of \$2,000 for construction, alteration, and/or repair of public buildings or public works, including painting and decorating, to which the United States or the District of Columbia is a party. This type of applicability is referred to as direct Davis-Bacon Act or DBA coverage. An example of DBA coverage is when HUD contracts directly for repairs to HUD-owned properties. HUD's Office of the Chief Procurement Officer manages these types of contracts. The DBA requires that the advertised specifications for such contracts contain a provision stating that the minimum wages to be paid to various classes of laborers and mechanics must be based upon the wages found to be prevailing by the Secretary of Labor.

Most HUD construction work is not covered by the DBA since HUD does not usually contract directly for construction work. Rather, Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD "Related Acts" such as the U. S. Housing Act of 1937 and the Housing and Community Development Act of 1974, as amended. The Related Acts (referred to throughout this Guide as the Davis-Bacon and Related Acts or DBRA) are discussed further in Section 5.9.

The DBA includes provisions that:

1. Require the contractor or subcontractor to pay all mechanics and laborers at least once per week;
2. Prohibit contractors or subcontractors from taking deductions or rebates from wages earned by laborers and mechanics;
3. Require the contractor or subcontractor to pay Davis-Bacon wages to all laborers and mechanics employed on the site of the work regardless of their skill level, and regardless of any contractual relationship alleged to exist between the laborers and mechanics and the contractor or subcontractor;

4. Require the contractor or subcontractor to post the scale of wages to be paid (i.e., the applicable Davis-Bacon wage decision) in a prominent and accessible place at the work site;
5. Define prevailing wages to include fringe benefits;
6. Permit the withholding of payments due to the contractor on account of wage restitution that may be found due to the laborers and mechanics;
7. Permit the payment of wage restitution from amounts withheld from contract payments;
8. Permit the termination of the contract where it is found that any laborer or mechanic is underpaid; and
9. Permit the debarment of persons or firms found to have disregarded their obligations to employees and subcontractors.

The Contract Work Hours and Safety Standards Act (CWHSSA)

The CWHSSA applies to both direct federal contracts and to federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Agencies (PHA), Tribally Designated Housing Entities (TDHE), and Indian Housing Agencies (IHA) developments.

CWHSSA O/T provisions do not apply to laborers and mechanics employed directly by PHAs or IHAs. However, O/T provisions generally apply to these workers under the Fair Labor Standards Act (FLSA). HUD does not have authority to enforce FLSA violations. Refer complaints of FLSA violations to DOL, Wage and Hour Division.

CWHSSA provides that all O/T hours (defined as hours worked in excess of 40 during any workweek on the CWHSSA-covered project site) must be compensated at a rate not less than one and one-half times the regular basic rate of pay. Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States Government for liquidated damages computed per person per day at a rate that DOL publishes annually. It is a federal criminal misdemeanor to intentionally violate CWHSSA standards.

Exemptions:

- **CWHSSA O/T provisions do not apply where the federal assistance is only in the nature of a loan guarantee or insurance.**
- **CWHSSA O/T provisions do not apply to prime contracts of \$100,000 or less.**

RESOURCE

DOL posts current fines at:

<https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>



The Copeland Act (Anti-Kickback Act)

The Copeland Act concerns three facets of prevailing wage compliance:

1. The “anti-kickback” provision prohibits contractors and subcontractors from inducing an employee working on a covered contract to give up any part of the compensation to which he or she is entitled. Violations are a criminal offense and are punishable by a \$5,000 fine or imprisonment up to five years, or both.
2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 CFR § 3.5; deductions that require advance DOL approval are explained at 29 CFR § 3.6.
3. The Act requires the submission of weekly CPRs accompanied by a Statement of Compliance by all contractors and subcontractors engaged in such construction, prosecution, completion, or repair. The willful falsification of a CPR or statement of compliance may subject the employer to civil or criminal prosecution under § 1001 of Title 18 and § 3729 of Title 31 of the United States Code (USC), and may also be a cause for debarment.

Exemptions:

- Copeland Act CPR requirements are applicable only where Davis-Bacon (DBA or DBRA) prevailing wage provisions are applicable.
- Copeland Act anti-kickback provisions do not apply where the only federal assistance is a loan guarantee.



The Fair Labor Standards Act (FLSA)

The FLSA governs matters such as federal minimum wage rates and O/T. These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

Portal-to-Portal Act (PA)

The PA applies to the DBA and prevents the commencement of any court suit for unpaid S/T wages more than two years after performance of the work (three years in the case of willful violations), where permissible under the law. However, DOL's position is that the PA does not apply to administrative actions initiated through Administrative Law Judge (ALJ) hearing procedures; thus, the PA does not preclude corrective administrative action after two (or three) years.

The PA does not apply to federally-assisted (DBRA) projects. Instead, the various State statutes of limitations apply to such projects in private actions where they are judicially determined to be permissible under the law. The Federal six-year statute of limitations applies in government enforcement actions.

McNamara-O'Hara Service Contract Act (SCA)

The SCA governs maintenance and other service work and applies

when the Federal Government or the District of Columbia contracts directly for such services and the value of the contract exceeds \$2,500. SCA coverage in HUD programs is limited because HUD infrequently enters into direct contracts for services in the administration of its programs. By way of example, however, a contract for maintenance service at an HUD-owned multifamily property would be covered by the SCA. Like DBA contracts, SCA contracts are managed under the auspices of HUD's Office of the Chief Procurement Officer. SCA enforcement authority resides solely with DOL.

Davis-Bacon Regulations

DOL has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in Title 29 CFR Parts 1, 3, 5, 6, and 7. Part 1 explains how DOL establishes and publishes DBA wage determinations (also referred to as wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly CPRs. Part 5 covers the labor standards provisions that are in contracts relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Finally, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

DOL Regulations are available online: www.ecfr.gov/current/title-29



Construction Contract Provisions and Labor Standards Administration

Labor standards administration involves the activities that take place primarily before construction begins. Administration sets the stage for the compliance activities that occur during the construction phase. The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Labor Standards Applicability (see Appendix II-6) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon, but there are some exceptions. The best and safest approach is to first assume that Davis-Bacon requirements will be applicable whenever the contract/project involves construction work valued in excess of \$2,000, then look more closely to see if there is any reason for non-coverage. Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally wound into the contract specifications.

The labor standards clauses

The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and with the O/T provisions of the CWHSSA (applicable

only when the prime contract is valued at over \$100,000).

The labor standards clauses also provide for remedies in the event of violations, including the withholding of payments due to the contractor to ensure the payment of wages or liquidated damages that may be found due, and sanctions should violations occur. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-92554M, Supplementary Conditions Of The Contract for Construction, which is issued primarily for FHA (Federal Housing Administration) multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG (Community Development Block Grant) and HOME (HOME Investment Partnerships Program) projects; and the HUD-5370, General Conditions for Construction Contracts (construction contracts >\$150,000) or the HUD-5370-EZ, General Contract Conditions for Small Construction/Development Contracts (construction contracts >\$2,000 but ≤\$150,000) which are used for Public and Indian Housing projects. These should be wound into the contract specifications or incorporated by specific reference in the bid/contract documents (see Labor Relations Letter 96-03).

RESOURCE

A fillable version of this form is available online at HUDClips www.hud.gov/program_offices/administration/hudclips/forms. Contact the contract administrator monitoring the project for assistance with a Project Wage Rate.



Specific Davis-Bacon Related Act (statute) for the program involved

Related Acts are program statutes that contain provisions requiring compliance with the wages that the Secretary of Labor finds to be prevailing pursuant to the Davis-Bacon Act. These are commonly referred to as the Davis-Bacon and Related Acts or DBRA.

HUD Related Acts include (but are not limited to) the:

- National Housing Act;
- U. S. Housing Act of 1937;
- Housing and Community Development Act of 1974;
- National Affordable Housing Act of 1990; and
- Native American Housing Assistance and Self-determination Act of 1996, each as amended.

Many of the labor provisions in HUD Related Acts contain applicability thresholds based upon the number of dwelling units involved. Some thresholds are based upon the amount of HUD assistance or the use of HUD funds or assistance. In addition, most HUD Related Acts contain exemptions from prevailing wage coverage for bona-fide volunteers. It is important for DBLS and LCA staff to be familiar with the statutory provisions and how these are interpreted.

The labor provisions found in current HUD Related Acts are excerpted for reference in Appendix II-1 to this Guide. Applicability factors relating to specific HUD Related Acts are in Appendix II-6.

Labor Standards Letters

This special directives series is designed to provide current and thorough guidance on Davis-Bacon issues in HUD programs. Popular topics include Davis-Bacon applicability, and prevailing wage requirements concerning self-employed laborers and mechanics. Labor Standards Letters are available online at the Davis-Bacon and Labor Standards Library: www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_ltr

HUD Guides

These Guides complement the guidance and instructions provided in HUD Handbook 1344.1, Federal Labor Standards Compliance in HUD Programs. These Guides are also available at the Davis-Bacon and Labor Standards Library.

Davis-Bacon Wage Decisions

The term “wage decision” includes the original decision and any subsequent decisions that modify, supersede, correct, or otherwise change the provisions of the original decision. The term “wage decision” is used within this Guide to mean the Davis-Bacon wage decision. The terms “wage decision” and “wage determination” are used interchangeably. A wage decision is a schedule of construction work classifications, wage rates, and fringe benefits that represent the minimum rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county



or group of counties, and four general characters of construction work.

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RESOURCE

All current Davis Bacon wage decisions can be accessed online at no cost at www.sam.gov

Character of work

There are four basic categories (or characters) of wage decisions based on the type of construction. DOL established these categories and provides details of each one in All Agency Memoranda Nos. 130 and 131. DOL provides further guidance in All Agency Memorandum 236, Prevailing Wage Resource Book, and Field Operations Handbook, Chapter 15. The four categories include:

1. **Residential:** Residential construction includes the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This typically includes all incidental items unless there is an established area practice to the contrary.

Incidental items are elements of a project whose function is to support the principal purpose and do not change the overall character of work. Examples of incidental items include sidewalks and handrails installed to support residential or building projects. While sidewalks intrinsically constitute “highway” construction, this element considered in conjunction with a residential or building project becomes incidental to the principal purpose of the construction and is subject to the same wage decision that applies to the principal purpose.



Character of work (continued)

- 2. **Building:** Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This category includes buildings exceeding four stories in height that have housing units and buildings of four stories or less that do not have housing units. This category also includes incidental items such as grading, sidewalks, and utilities. Building examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, parking garages, and dormitories.
- 3. **Highway:** Highway construction includes the construction, alteration, or repair of roads, streets, highways, alleys, parking areas, and other similar projects not incidental to the main category of construction, which is either residential or building for housing development projects.
- 4. **Heavy:** Heavy construction includes those projects that are not properly classified as “residential,” “building,” or “highway.” Some examples include antenna towers, canals, landscaping, drainage and irrigation projects, permanent erosion control, storm sewers, and storage tanks.

General wage decisions

Most Davis-Bacon wage decisions are general wage decisions. DOL usually publishes these annually and may modify or supersede them throughout the year. LCAs and HUD Labor Standard Specialists (LSS) may use general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published

general wage decisions.

General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors, and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if HUD or an LCA receives them, or if notice of the modification is published at www.sam.gov prior to the lock-in date. Modifications to a project wage decision expire on the same date as the original project wage decision. A modification to a general wage determination remains in effect until it is superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.

Project wage decisions

If an appropriate wage decision (by location, character of work, or specific trade required) is not published in the general wage decisions, a project wage decision shall be requested from DOL. Project wage decisions are applicable only to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified.

A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example: A project involves only roof replacement on a 4-story apartment building and the only classification needed for the entire contract is a roofer.



Project wage decisions (continued)

A general wage decision is published for residential construction in the county in which the project is located; however, the general wage decision does not include a roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision may be requested from DOL.

RESOURCE

General wage decisions and modifications are available at www.sam.gov

This is the only online location endorsed by DOL. Project wage decisions must be requested on a case by case basis from DOL.

Project wage decisions, as needed

The LCA or LSS shall submit a completed SF-308, Request for Wage Determination And Response to Request, to the DOL National Office, allowing 30 days for receipt of the project wage decision from DOL.

Selecting the correct wage decision

The responsible contracting officer (also referred to as the contract administrator) selects and assigns wage decisions to specific contracts or projects. For HUD-administered projects (e.g., FHA-insured multifamily development), the responsible contracting officer is the LSS. In addition, the LSS provides technical support and oversight to LCAs

administering HUD programs in selecting and assigning appropriate wage decisions. Determining wage decisions is dependent upon the geographic location and the character of work (Residential, Building, Highway, and/or Heavy) assigned to the project.

A request for additional classification and wage rates may be made only after contract award. The request must originate with the contractor/ employer and must be submitted by the LCA to DOL.

MORE INFO

Conformances (additional classifications)

At times, the wage decision will not contain some of the work classification and wage rates that are needed for the construction work. In these cases, send a form SF 1444 to DOL at whd-cbaconformance_incoming@dol.gov



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A request for additional classification and wage rates may be made only after contract award. The request must originate with the contractor/ employer and must be submitted by the LCA to DOL.

Verify contractor eligibility

Once the LCA has selected the contractor to whom they wish to award the contract, the LCA must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. Only the eligibility of the prime contractor needs to be verified. The U.S. General Services Administration (GSA) maintains a list of ineligible contractors, which can be accessed online at www.sam.gov.

An additional classification and wage rate will be approved by DOL where:

1. The requested work classification is used in the area of the project by the construction industry;
2. The work that will be performed is not performed by a work classification already contained in the wage decision;
3. The proposed wage rate bears a reasonable relationship to the wage rates on the wage decision; and
4. The workers that will be employed in the requested work classification (if known) or the workers' representatives (if any) agree with the proposed wage rate.

Provide contractor training

The LCA must make certain that the contractor understands its responsibilities for Davis-Bacon compliance: The principal contractor is responsible for the full compliance of all employers (the contractor, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project. LCAs may also wish to provide formal training separate from the contracting process for contractors that are interested in performing work on HUD-assisted contracts and want to learn more about what is involved.





CONTRACTOR RESPONSIBILITIES

See Section 4 in the Contractor Addendum.

CONTRACT ADMINISTRATOR RESPONSIBILITIES

See Section 5 in the Contractor Addendum.

LCA FLEXIBILITY FOR LABOR STANDARDS RESPONSIBILITIES

While some aspects of labor standards administration are inflexible, such as which wage decision is applicable to a specific project, the following aspects are not. For these, HUD leaves the preference of how to achieve end results with the LCA.

LCA's may hold preconstruction conferences for labor standards purposes.

HUD acknowledges that there are many good reasons to hold a preconstruction conference (PCC), and these conferences are strongly encouraged in order to have the opportunity to discuss topics such as construction inspections, progress and contractor payment requirements, Section 3 employment and training, and other issues particular to the project. However, HUD has determined that the time and resources used to conduct and document PCCs for labor standards purposes do not yield measurably better results.

Many contractors have prior Davis-Bacon contract experience and have demonstrated successful performance. These contractors do not require the repetitive basic training that is provided at most PCCs. Contractors new to Davis-Bacon projects that understand the basic requirements and choose not to comply will likely not be persuaded to fully comply just because they attended a PCC.

LCA's may prepare Project Wage Rate Sheets

Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the workers reviewing the wage decision to determine whether they are being paid correctly. For ease of reference for the LSS/LCA, the prime contractor and any subcontractors, and the workers, the LSS/LCA may prepare a form HUD-4720, Project Wage Rate Sheet, which should reflect the most commonly used work classifications and wage rates as contained in the wage decision applicable to the project. The Project Wage Rate Sheet should be prepared only after the wage decision has been "locked-in" by contract award or start of construction, as applicable. The Project Wage Rate Sheet does not replace the wage decision; it is only provided as a convenience. If there is a conflict between the Project Wage Rate Sheet and the wage decision, the wage decision prevails.

LCA's can prepare a Project Wage Rate Sheet for contracts using the onscreen fillable versions in either the HUD Forms or DBLS websites. HUD DBLS staff is available to provide assistance to LCA's in preparing Project Wage Rate Sheets. HUD strongly recommends incorporation of the full wage decision text into bid solicitations and contracts, either in hard copy or by specific reference.

LCAs may develop their own labor standards file system

HUD believes that LCAs can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls be preserved for no less than three years after completion of the project and the resolution of any enforcement actions that may carry over after completion. In addition, the files must be maintained in such a way that the LCA can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the LCA must, at HUD's request, demonstrate how it has documented that the eligibility of the prime contractor was verified for each contract.

LCAs may target on-site interviews with laborers and mechanics

HUD is interested in using on-site interviews as a proactive enforcement tool rather than to meet a "representative sampling" quota. Instead of conducting interviews randomly for the sake of assembling a sample, LCAs are encouraged to target interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific ongoing enforcement action. HUD realizes that this approach may mean that fewer on-site interviews may be conducted randomly; HUD considers targeting a far more efficient and effective means of utilizing on-site interview resources.

LCAs may limit payroll reviews to spot-checks and HUD-11 (Employee Interview Form) comparison

The goal: to detect falsification. HUD believes that serious violations involving underpaid workers and significant wage restitution may be overlooked because the contract administrator is overtasked with HUD-mandated payroll review minutiae. HUD recognizes that it is not possible to conduct payroll reviews in 100% of cases; therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of affected workers and the amount of underpayment) than violations that appear on the face of the payroll records. Accordingly, HUD has prioritized payroll reviews so that the objective is to detect falsification, and so that enforcement activities will yield the greatest impact. HUD has developed guidance on how to detect falsification through spot-checks and HUD-11 interview comparison. (See Willful Violations and Falsification Applicability in Appendix III-1.)



LCAS may limit payroll reviews to spot-checks and HUD-11 (Employee Interview Form) comparison (continued)

Routine payroll review results may be communicated to the prime contractor by telephone and documented with a record in the file. Many times, the types of deficiencies that come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, email, etc.) with the employer/prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally—assuming the cooperation of both sides—include a missing payroll report or missing apprenticeship certificates, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor's cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the employer/prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal means.

RESOURCE

The Department of Housing and Urban Development (HUD) one stop forms resource page.

www.hud.gov/program_offices/administration/hudclips/forms





FEDERAL LABOR STANDARDS COMPLIANCE CHECKLIST FOR DAVIS-BACON COVERED PROJECTS

RESOURCE

See LCA DBRA Checklist online at the link below:

https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/OLRLibrary

REVIEWING PAYROLLS

See Section 7 in the Contractor Addendum.

REPORTING PAYROLLS

See Section 8 in the Contractor Addendum.

PAYROLL COMPLIANCE REVIEWS AND CORRECTIONS

Compliance reviews

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. DOL may also independently conduct its own reviews (see 10.2.2 in the Contractor Addendum). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. Contractors will be notified by

the contract administrator if these reviews find any discrepancies or errors, and will be given instructions about what steps must be taken to correct any problems.

On-site interviews

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative (or HUD or DOL representative). The interviews are confidential and the employees will be asked about the number of hours they work, the kind of work they perform, and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the ongoing work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator. Completed HUD-11s must be compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information.

RESOURCE

HUD 11 forms are available online in English and in Spanish in a fillable format via the HUD Forms website (www.hud.gov/program_offices/administration/hudclips/forms) and at the DBLS website (www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform).

Project payroll reviews

The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification, and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed, that employees are paid no less than the wage rate for the work classification shown, that apprentice and trainee certifications are submitted (where needed), that employee or other authorizations for other deductions are submitted (where needed), etc. Contract administrators should be particularly alert for indications of payroll falsification—misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates that a contractor or subcontractor is aware of its obligations, is knowingly underpaying its employees, and is attempting to avoid detection of the violations. See Appendix III-1 for an explanation of willful violations and falsification indicators.

Typical payroll errors and required corrections

Contract administrators must ensure the full correction of all discrepancies disclosed during compliance monitoring conducted by the LCA, HUD, or DOL. This includes the collection of documentation to demonstrate that corrective measures have been successfully completed. They must:

1. Examine and resolve probable violations and complaints of underpayment. Contract administrators must explore probable violations—particularly those involving falsification of payrolls and complaints alleging underpayments. In addition to the HUD-11, Record of Employee Interview, HUD has developed a questionnaire form (HUD-4730) and a complaint intake form (HUD-4731) for HUD and LCA use. The forms are available in onscreen fillable formats at the HUD forms website and via the DBLS website;
2. Refer complex issues and/or falsification cases to HUD or DOL. Some issues may be more complex than LCAs are able to address. HUD encourages LCAs to consult with the LSS for their area to secure appropriate guidance and support. HUD has decided, in consultation with DOL, that it will refer to DOL cases involving falsification of payrolls or related documents for DOL investigation. HUD strongly suggests that LCAs employ this strategy for cases involving falsification;
3. Take steps to ensure the full resolution of any monetary liability that has or may be imposed for labor standards reasons. Contract administrators must take prompt action to ensure that funds will be available to satisfy any labor standards liability that may be imposed. Actions include the withholding of contract payments due to the contractor and requiring funding for an escrow account to guarantee the satisfaction of any restitution and/or liquidated damages assessment that may be pending at contract closeout;



Typical payroll errors and required corrections (continued)

4. Recommend debarment against repeat violators. HUD has implemented a zero tolerance policy against contractors who are repeat violators of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for O/T violations) that may be assessed. In addition, the employer must provide written assurance of future compliance. If the employer promptly completes these corrective actions, HUD will not object if the LCA does not recommend debarment against the employer unless there are extenuating circumstances that warrant debarment. If the employer is found in violation again, the LCA must require full correction of any underpayments and payment of CWHSSA liquidated damages assessed. A debarment recommendation made by the LCA against the employer is expected; and
5. Prepare and submit enforcement reports. In accordance with DOL regulations (29 CFR Part 5, § 5.7), the contract administrator must prepare and submit to HUD an enforcement report in any case where an employer (contractor or subcontractor) has underpaid its employees by \$1,000 or more or where there is reason to believe that the violations are aggravated or willful, and prepare and submit to HUD semi-annual enforcement reports concerning all Davis-Bacon labor standards administration and enforcement activities involving all HUD-assisted programs. Enforcement reports cover wage underpayments by contractors and subcontractors.

Note that enforcement reports concern only wage violations associated with projects or contracts subject to the labor standards provisions of the DBRA.

Employer-specific enforcement reports

These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all federal, state, and local agencies. Second, to refer to the Wage and Hour Administrator investigative findings that are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Third, to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA O/T violations. (See Labor Relations Letter LR-92-02 for additional guidance concerning employer-based enforcement reports.)

6. Semi-Annual Enforcement Reports. HUD is required to furnish to DOL semi-annual reports (SARs) concerning the volume of DBRA-covered activities and the compliance and enforcement of DBRA labor standards provisions in HUD programs. The reports are due to DOL by April 30 and October 31 of each calendar year and cover the periods of October 1 through March 31 and April 1 through September 30, respectively. (See DOL regulations at 29 CFR § 5.7(b) and All Agency Memorandum 189.)



Typical payroll errors and required corrections (continued)

To prepare the SAR, HQLS (Headquarters Office Davis-Bacon and Labor Standards) collects data from the LSIS (Labor Standards Information System) and from each RLSO (Regional Labor Standards Officer), and then submits the report to DOL, which accepts electronic submittals of the semi-annual reports in lieu of paper copies at SemiAnnualReport@DOL.gov. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all HUD-assisted Davis-Bacon construction activity. The report may be completed onscreen, saved, and attached to an email message for submission purposes.

RESOURCE

A copy of the Semi Annual Report form (HUD 4710) and instructions (HUD4710i) for LCAs and are available at HUDClips (www.hud.gov/program_offices/administration/hudclips/forms) and at the Davis Bacon and Labor Standards Forms page (www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform).

MORE INFO

States may report directly to DOL, as the state chooses. PHAs, IHAs, and TDHEs should send data for Davis Bacon projects only; data relating to HUD determined maintenance wage rate projects or projects subject to Tribally determined wage rates (for construction or maintenance work) should not be included.



Common errors

The following paragraphs describe common payroll errors and the corrective steps that must be taken.

Inadequate payroll information

If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate (e.g., does not contain all the necessary information that would be on the optional form WH-347), the employer will be asked to resubmit the payrolls on an acceptable form.

Missing identification numbers

If the first payroll on which an employee appears does not contain the employee's individually identifying number, the employer will be asked to supply the missing information. This information can be reported on the next payroll submitted by the employer if the employer is still working on the project. Otherwise, the employer will be asked to submit a correction certified payroll.

Incomplete payrolls

If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a correction certified payroll.

Classifications

If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision, or the employer may request an ad-

ditional classification and wage rate (see Section 9 in the Contractor Addendum). If reclassification results in underpayment (i.e., the wage rate reported on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees (see Section 10 in the Contractor Addendum for instructions about wage restitution).

Wage rates

If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.

Indications of falsification on payrolls

The greatest threat to construction workers entitled to a statutorily-mandated prevailing wage for their craft is from employers who know what is required, choose not to pay the required prevailing wage rates, and falsify CPRs to conceal the underpayments. Such willful violators see the workers' underpayment as their own gain and engage in deception to increase this gain. In addition, willful violators that successfully escape detection and are not required to pay prevailing wages will continue to bid on Davis-Bacon contracts until their violations are disclosed and administrative sanctions such as debarment are imposed.

Falsification indicators

HUD has prepared a list and explanation of four common falsification indicators that are detectable during payroll "spot-checks."



Information reported on payrolls that indicate falsification suggests willful, much more serious violations in terms of the amount of back wages that may be due and the number of employees affected.

Such cases most often warrant investigation, which can include on-site interviews, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case. See Appendix III-1 for an explanation of willful violations and falsification indicators.

Apprentices and trainees

If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.

Overtime

If the employees did not receive at least time and one-half for any O/T hours worked on the project, the following will occur:

1. If the project is subject to CWHSSA O/T requirements, the employer will be asked to pay wage restitution for all O/T hours worked on the project.

The employer may also be liable to the United States for liquidated damages computed at \$26 per day per violation, and indexed to increase annually. Or,

2. If the project is not subject to CWHSSA, the employer will be notified of the possible FLSA O/T violations.

Also, the contract administrator may refer the matter to DOL for further review.

Computations

If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

Deductions

If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization, or explain unusual deductions, as necessary.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of CPRs that show wages paid in gross amounts (i.e., without tax deduction) for its review and appropriate action.



Fringe benefits

If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid (neither 4(a) nor 4(b) is marked on the Statement of Compliance), the employer may be asked to submit correction certified payrolls and will be required to pay wage restitution if underpayments occurred.

However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.

Signature

If the payroll Statement of Compliance is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principal of the firm and that person has not been authorized by principal to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature of a principal or other authorized signatory.

On-site interview comparisons

If the comparison of on-site interviews to the payrolls indicates any discrepancies (e.g., the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a correction CPR.

Correction certified payroll

Any and all changes to data on a submitted payroll report must be re-

ported on a certified correction payroll. In no case will a payroll report be returned to the prime contractor or employer for revision.

Restitution for underpayment of wages

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 on a CPR. If a violation of labor standards requirements results in an underpayment of wages to employees, the LCA should notify the prime contractor to either make wage restitution or direct its subcontractor to do so. Where restitution amounts are in excess of \$10 per worker, the employer must attest to wage restitution paid on a correction certified payroll.

Notification to the Employer/Prime contractor

The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. 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.



Notification to the Employer/Prime contractor (continued)

MORE INFO

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work with the prime contractor when the issues are complex, when there are significant underpayments, and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required documentation.

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. Alternatively, wage restitution may be computed by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.

Total hours worked times (x) adjustment rate (DB rate – rate paid) = wage restitution due; or

Total wages earned minus (-) total wages paid = wage restitution due.

Correction certified payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period for which restitution is due (e.g., Payrolls #1 through #6, or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification, the total number of work hours involved (daily hours are usually not applicable for wage restitution), 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 actually paid. A properly signed Statement of Compliance must accompany the correction payroll. HUD no longer requires the signature of the employee on the correction payroll to evidence employee receipt of restitution payment. In addition, except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashier's, canceled, or other) or employee-signed receipts or waivers.

MORE INFO

In the course of basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks, copies of cancelled checks, receipts signed by the employees, employee signatures on the correction CPR, etc., is not required.



Review of correction CPR

The contract administrator will review the correction certified 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, documented on a correction certified payroll within 30 days.

Withholding payments due to the contractor

If wage violations are not corrected within 30 days after notification to the prime contractor, the LCA may cause the withholding of payments due to the contractor in the amount needed to ensure the full payment of restitution and, if applicable, liquidated damages computed for CWHSSA O/T violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities should be withheld.

Unfound workers

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot be located. After wage restitution has been paid to all the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers), providing their name, Social Security number, last known address, and the gross amount due. In such cases, at the end of the project the prime contractor will be required to place in a deposit or labor standards escrow account an amount equal to the total gross amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD. Contact the HUD LSS for your area if you encounter this situation.





ADDITIONAL WORK CLASSIFICATION AND WAGE RATES

See Section 9 in the Contractor Addendum.

SANCTIONS AND RESTITUTION

See Section 9 in the Contractor Addendum.

APPENDIX

- **Appendix I-1 Reorganization Plan No. 14 of 1950**
- **Appendix I-2 Delegations of Authority**
- **Appendix I-3 Labor Standards Core Work Activities**
- **Appendix II-1 HUD Davis-Bacon Related Acts**
- **Appendix II-2 Davis-Bacon Act Copeland Anti-Kickback Act**
- **Appendix II-3 Contract Work Hours and Safety Standards Act**
- **Appendix II-4 Federal Labor Standards Coverage in Major HUD Programs**
- **Appendix II-5 Factors of Labor Standards Applicability**
- **Appendix III-1 HUD's Willful Violations and Falsification Applicability**
- **Appendix III-2 Sample Deposit Schedule**
- **Appendix III-3 Sample Tax Withholding Notice**
- **Appendix III-4 Unfound Worker Schedule**
- **Appendix III-5 Refund of Deposit Memorandum Template**
- **Appendix IV-1 Acronyms and Symbols**



DAVIS-BACON AND LABOR STANDARDS CONTRACTOR GUIDE ADDENDUM



INTRODUCTION

This Guide has been prepared for you as a contractor performing work on construction projects that are assisted by the Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide does not address contractor requirements involved in direct Federal contracting where HUD or another Federal agency enters into a procurement contract. In this latter case, the Federal Acquisition Regulations (FAR) are applicable. While the guidance contained in this Guide is generally applicable to any Davis-Bacon covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

Our objective here is to provide you with a guide that is simple and non-bureaucratic yet comprehensive, and will help you better understand and comply with Davis-Bacon labor standards. HUD's Office of Davis Bacon and Labor Standards worked closely with the Department of Labor's Wage and Hour Division to make sure that the labor standards provisions in your contract and the specifics of complying with them represent the latest information. It is the Department of Labor that has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts that they either fund or assist in funding.

This Guide contains six main chapters. The first chapter includes the laws and regulations associated with Federal labor standards administration and enforcement. The second chapter lists the responsibilities of contractors and of state, tribal, and local contracting agencies that administer HUD programs. The third chapter lists wage basics, including wage decisions, wage classifications, and wage rates, to provide background for the rest of the Guide. The fourth chapter discusses reviewing and reporting payrolls. The fifth chapter delves into additional work classifications and wage rates. The sixth and final chapter discusses sanctions and restitution. For further background, the DBLS Agency Guide may be used as a reference.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. Should you wish assistance in determining whether Davis-Bacon wage rates apply to a particular project or if you need other related technical assistance, please consult with the HUD Labor Standards Field staff for your area.

RESOURCE

Visit the Office of Davis Bacon and Labor Standards online:
www.hud.gov/program_offices/davis_bacon_and_labor_standards

BASIC DBA DEFINITIONS

See Section 3 in the Agency Guide.



LAWS AND REGULATIONS

The Davis-Bacon Act (DBA)

The Davis-Bacon Act (DBA) requires the payment of prevailing wage rates (determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/ or repair, including painting and decorating, of public buildings or public works. Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if DB applies to a HUD project is it because of a labor provision contained in one of HUD's "Related Acts" (see 5.9 in the Agency Guide). The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (OT) hours (over 40 in any workweek) worked on a covered project. The CWHSSA applies to both direct federal contracts and to federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Agencies (PHA), Tribally Designated Housing Entities (TDHE), and Indian Housing Agencies (IHA) developments.

Exemptions:

CWHSSA O/T provisions do not apply where the federal assistance is only in the nature of a loan guarantee or insurance.

CWHSSA O/T provisions do not apply to prime contracts of \$100,000 or less.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to kickback, (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer to submit weekly certified payroll reports, and regulates permissible payroll deductions.

The Fair Labor Standards Act (FLSA)

The FLSA governs matters such as federal minimum wage rates and O/T. These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

Davis-Bacon Regulations

DOL has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in Title 29 CFR Parts 1, 3, 5, 6, and 7. Part 1 explains how DOL establishes and publishes DBA wage determinations (also referred to as wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly CPRs. Part 5 covers the labor standards provisions that are in contracts relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Finally, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

DOL Regulations are available online: www.ecfr.gov/current/title-29

Construction Contract Provisions and Labor Standards Administration

Labor standards administration involves the activities that take place primarily before construction begins. Administration sets the stage for the compliance activities that occur during the construction phase. The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Labor Standards Applicability (see Appendix II-6) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon, but there are some exceptions. The best and safest approach is to first assume that Davis-Bacon requirements will be applicable whenever the contract/project involves construction work valued in excess of \$2,000, then look more closely to see if there is any reason for non-coverage. Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally wound into the contract specifications.

The labor standards clauses

The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the Davis-Bacon wage and reporting

requirements and with the O/T provisions of the CWHSSA (applicable only when the prime contract is valued at over \$100,000). The labor standards clauses also provide for remedies in the event of violations, including the withholding of payments due to the contractor to ensure the payment of wages or liquidated damages that may be found due, and sanctions should violations occur. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-92554M, Supplementary Conditions Of The Contract for Construction, which is issued primarily for FHA (Federal Housing Administration) multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG (Community Development and Block Grant) and HOME (HOME Investment Partnerships Program) projects; and the HUD-5370, General Conditions for Construction Contracts (construction contracts >\$150,000) or the HUD-5370-EZ, General Contract Conditions for Small Construction/Development Contracts (construction contracts >\$2,000 but ≤\$150,000) which are used for Public and Indian Housing projects. These should be wound into the contract specifications or incorporated by specific reference in the bid/contract documents (see Labor Relations Letter 96-03).



Davis-Bacon Wage Decisions

The term “wage decision” includes the original decision and any subsequent decisions that modify, supersede, correct, or otherwise change the provisions of the original decision. The term “wage decision” is used within this Guide to mean the Davis-Bacon wage decision. The terms “wage decision” and “wage determination” are used interchangeably. A wage decision is a schedule of construction work classifications, wage rates, and fringe benefits that represent the minimum rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county or group of counties, and four general characters of construction work.

RESOURCE

The Department of Housing and Urban Development (HUD) one stop forms resource page.

www.hud.gov/program_offices/administration/hudclips/forms

RESOURCE

All current Davis Bacon wage decisions can be accessed online at no cost at www.sam.gov





CONTRACTOR RESPONSIBILITIES

The principal contractor is responsible for the full compliance of all employers (the contractor, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and their subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See [Contract Administrator Responsibilities](#), below.)

In these cases, the contract administrator will likely be local agency staff. In either case, the guidance for contractors remains essentially the same.

DOL also has a role in monitoring Davis-Bacon administration and enforcement. In addition, DOL has independent authority to conduct investigations. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

CONTRACT ADMINISTRATOR RESPONSIBILITIES

The contract administrator is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. This term is used to represent the person (or persons) who will provide labor standards advice and support to contractors and other project principals (e.g., owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see 6.1, [The Wage Decision](#)) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see [Section 12, Payroll Compliance Reviews and Corrections](#), in the [Agency Guide](#)) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Standards field staff. But many HUD-assisted projects are administered by local contracting agencies such as PHAs, TDHEs, and States, cities and counties under HUD's CDBG and HOME programs.

RESOURCE

Program technical guidance

For interpretations of program requirements or handbooks and instructions on the use of forms:

Housing Programs - See our [Contact List](#) for help.



WAGE BASICS

The Wage Decision

Davis-Bacon labor standards stipulate the wage payment requirements for skilled workers, operators, truck drivers, and laborers—for example: carpenters, electricians, plumbers, roofers, rollers, screeds, bulldozers, water wagons, dump trucks, and other construction work classifications that may be needed for the project. The Davis-Bacon wage decision that applies to the project contains a schedule of work classifications and wage rates that must be followed.

Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See 5.12 in the Agency Guide.

The work classifications and wage rates

A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications.

You'll want to make sure that the work classifications you need are contained in the wage decision, and make certain that you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (e.g., residential and commercial work) and can be lengthy and difficult to read. The contract administrator (HUD Labor Standards field staff or local agency staff) is available to assist with any trouble reading the wage decision or finding the applicable work classification(s).

To make reading lengthy wage decisions easier, a contract administrator may prepare a Project Wage Sheet (HUD-4720). This sheet is a one-page transcript that will show only the classifications and wage rates for a project. A blank copy of a Project Wage Rate Sheet is provided in the Appendix.

RESOURCE

A fillable version of this form is available online at HUDClips www.hud.gov/program_offices/administration/hudclips/forms
Contact the contract administrator monitoring the project for assistance with a Project Wage Rate.

Posting the wage decision, Davis-Bacon poster, and Additional Classifications wages

The prime contractor is responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet), a copy of the DOL Davis-Bacon poster titled Employee Rights Under the Davis-Bacon Act (Form WH-1321), and Additional Classifications wages at the job site in a place that is easily accessible to all the construction workers employed on the project and where the wage decision and poster will not be destroyed by wind, rain, etc. The purpose of this posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage for their trade, and to advise them whom to contact (the contract administrator) if they have any questions or want to file a complaint.

RESOURCE

The Employee Rights Under the Davis Bacon Act poster replaces the Notice To All Employees. The new poster is available in English and Spanish online at: www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrmk13.



REVIEWING PAYROLLS

Certified Payroll Reports (CPRs)

To demonstrate compliance with labor standards requirements, each employer shall prepare, certify, and submit payroll reports for each week to the sponsor, applicant, or owner for any contract work that is performed. See 29 CFR § 5.5(a)(3)(ii) for information on CPRs.

CPR format

Employers on an FHA project are required to use the HUD-authorized Electronic Payroll System (EPS) to submit CPR reports. If an approved electronic payroll reporting system is not being used by the LCA,, the employer must ensure that all information from DOL Payroll Form WH-347 is included and that the LSS can reasonably interpret it. Form WH-347 is available online at www.dol.gov/whd/forms/wh347.pdf.

Submission requirements

Each employer shall submit payroll reports beginning with the first week such employer performs work on the site of the work. Employers shall submit reports promptly following the close of each such pay week.

“No Work” payrolls

Employers are not required to submit reports for weeks during which no work was performed at the site of work, provided that the payroll reports are numbered sequentially or that the employer has provided written notice that its work on the project has been suspended.

Weekly payroll certification

Each weekly payroll submitted shall be accompanied by a “Statement of Compliance” that bears the original signature of the owner, executive/ corporate officer, or a designee authorized by the owner or officer. The signature must be in ink; pencil is not acceptable. Signature stamps, photocopies, and facsimiles are not acceptable. The employer may utilize the reverse side of the DOL Payroll Form WH-347 as its Statement of Compliance or another document that contains the same language prescribed on the reverse of the WH-347.

False Submissions

The falsification of any of the above certifications may subject the employer to civil or criminal prosecution under § 1001 of Title 18 and § 231 of Title 31 of the United States Code (USC).

Payroll Review and Submission

The prime contractor should review each subcontractor's payroll reports for compliance prior to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for O/T violations. All the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments, and protect itself from financial loss should underpayments occur.

Payroll Retention

Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records—such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments—for a Davis-Bacon project for at least three years after the project is completed. The prime contractor must keep a complete set of all the payrolls for every contractor (including subcontractors) for at least three years after completion of the project.

Payroll Inspection

In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or DOL.





REPORTING PAYROLLS

Completing a Payroll Report

Each employer shall maintain payroll records with respect to their own workforce employed at the site of the work. The prime contractor shall maintain such records relative to all laborers and mechanics working at the site of the work during the course of the construction work for at least three years following the completion of the work. Such records shall contain:

Project and contractor/subcontractor information

Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Week dates must be indicated in the spaces provided. Numbering payrolls is optional but strongly recommended.

Employee information

The name and an individually identifying 4-digit number for each laborer and mechanic. Employers must always maintain each employee's address and full Social Security number (SSN) during the construction of the project and for no less than three years following completion. This information must be made available to the prime contractor, HUD, and/or the LCA upon request.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for Federal labor standards compliance monitoring. Prime contractors may require a subcontractor to provide this information for the prime contractor's records. DOL has modified form WH-347, Payroll, to accommodate these reporting requirements.

Work classification

Each employee must be classified in accordance with the wage decision based on the type of work they perform.

Apprentices or trainees

The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.

Split classifications

For an employee that worked in a split classification, make a separate entry for each classification of work performed, distributing the hours of work to each classification accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

Hours worked

The payroll should show only the regular and O/T hours worked on one particular project. The employer must show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. In these cases, employers should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for all projects. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.

Rate of pay

Employers must show the basic hourly rate of pay for each employee for one particular project. If the wage decision includes a fringe benefit and the employer does not participate in approved fringe benefit programs, the employer must add the fringe benefit rate to the basic hourly rate of pay, and must list the O/T rate if O/T hours were worked.

Piece-work

For any piece-work employees, the employer must compute an effective hourly rate for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any O/T hours.

The effective hourly rate must be reflected on the certified payroll. This hourly rate may be no less than the wage rate (including fringe benefits, if any) on the wage decision for the classification of work performed. It does not matter that the effective hourly rate changes from week to week, only that the rate is no less than the rate on the wage decision for the classification of work performed.

Remember, the O/T rate is computed at one and one-half times the basic rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the O/T rate would be: $(\$10 \times 1.5) + \$5 = \$20/\text{hour}$.

Gross wages earned

Show the gross amount of wages earned for work performed on a particular project. Note: Employees with work hours and earnings on other projects may show gross wages for a particular project over gross earnings from all projects (e.g., \$425.40/\$764.85) and base deductions and net pay on the "all projects" earnings.

Deductions

Show the amounts of any deductions from the gross earnings. "Other" deductions should be identified (e.g., Savings Account or Loan Repayment). Any voluntary deduction (i.e., not required by law or by an order of a proper authority) must be authorized in writing by the employee or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears. The note needs to show the type, amount, and frequency of the deduction. A new deduction authorization is required when any of the aforementioned items change.

MORE INFO

Only one employee authorization is needed for recurring (e.g., weekly) "other" deductions. Written employee authorization is not required for income tax and Social Security deductions.



Net pay

Show the net amount of wages paid.

Statement of Compliance

The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (WH-347). Employers must be sure to complete the identifying information at the top, particularly if attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. Also, the employer must check either 4(a) or 4(b) if the wage decision contains a fringe benefit. Checking 4(a) indicates that the employer is paying required fringe benefits to approved plans or programs; and 4(b) indicates that the employer is paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If the employer is paying a portion of the required fringe benefit to programs and the balance directly to the employee, the employer must explain those differences in box 4(c).

Signature

For paper payrolls submitted, the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer, or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. For paper payrolls, signatures in pencil, signature stamps, Xerox copies, PDFs, and other facsimiles are not acceptable.

MORE INFO

Only one Statement of Compliance is required for each employer's weekly payroll no matter how many pages are needed to report the employee data.





ADDITIONAL WORK CLASSIFICATION AND WAGERATES

After contract award, if it is determined that additional work classifications are required because the wage decision lacks all the necessary classifications and wage rates, the prime contractor and, if applicable, its subcontractors employing workers in such classifications shall request an additional work classification and propose a wage rate and fringe benefits for such classification on form SF-1444, Request for Authorization of Additional Classification and Rate. The contractor or subcontractor shall make its request for a final decision through the LSS or LCA, as appropriate, to DOL at whd-cbaconformance_incoming@dol.gov. The LSS/LCA shall assist the employer in preparing the request and, if necessary, provide guidance on the policies and procedures involved.

Note: Additional work classifications and wage rates may be requested only after the effective wage decision “lock-in” date. (See DOL Regulations at 29 CFR Part 5 § 5.5(a)(1)(ii).)

Additional Work Classification and Wage Rate Parameters

Signature

Additional work classifications must be signed by DBLS for FHA-insured projects managed by HUD and signed by the LCA contracting officer for projects managed by LCAs, then forwarded to DOL with the applicable wage decision where:

The requested work classification is used in the area of the project by the construction industry;

The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision;

The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision; and

The workers that will be employed in the requested work classification (if it is known who the workers are or will be) or the workers’ representatives agree with the proposed wage rate.

General guide

The wage rate and fringe benefits proposed for any classification must be in accordance with the guidance available in All Agency Memorandum 213. The proposed wage rate and fringe benefits should bear a reasonable relationship to the entirety of the rates within the relevant category. There are four basic categories: skilled crafts, laborers, truck drivers, and power equipment operators. Additional classifications proposed for power equipment operators must specify the type(s) of power equipment involved.

Making the Request

Although a request for additional work classification and wage rate may be prompted following an LSS/LCA review, the proposal must originate with the prime contractor/employer that will utilize the work classification. The prime contractor/employer must submit the request in writing. A basic request must identify the contract/project involved, the work classification requested, and the wage rate, including any bona fide fringe benefits proposed. In some cases, it may be necessary for the prime contractor/employer to describe the work that the requested work classification would perform. The prime contractor/employer should use form SF-1444, Request for Authorization of Additional Classification and Rate, to submit the request.

LSS/LCA Review of Request

The LSS/LCA will review the prime contractor/employer's request to determine if it satisfies the approval criteria at 5.12.1.9.2. The LSS/LCA will contact the prime contractor/employer if clarification or additional information is needed to complete the review.

Signing the request, reporting to DOL

If the LSS/LCA review finds that the requested work classifications and wage rate/fringe benefits meet the criteria at 5.12.1.9.2, the LSS/LCA submits the completed SF-1444, related documentation, and the applicable wage decision to the DOL National Office for final decision using DOL's dedicated email address:

whd-cbaconformance_incoming@dol.gov.

Disagreement with the request; referring for DOL decision

If the LSS/LCA review finds that the requested work classification and wage rate/fringe benefits fails to meet the approval criteria or if the parties do not agree on the proper classification or wage rate/fringe benefits for the work described, the LSS/LCA shall prepare an SF-1444 and a written report explaining the results of the review and any issues in dispute among the parties, and shall forward these along with a copy of the applicable wage decision to the DOL National Office for its decision using the same dedicated DOL email address.

DOL decision

DOL regulations permit 30 days for DOL to respond to the SF-1444. DOL will notify the LSS/LCA in writing of its decision.

DOL approval

When DOL approves the requested additional work classification and wage rate/fringe benefits, the LSS/LCA shall provide a copy of the DOL notice of approval to the prime contractor/employer with instructions that the additional work classification and wage rate/fringe benefits must be posted on the job site with the wage decision.



DOL disapproval

When DOL disapproves the requested work classification and wage rate/fringe benefits, DOL will notify the LSS/LCA in writing of the reasons why the request cannot be approved. DOL may also indicate what work classifications/wage rate/fringe benefits could be approved for the work involved if a modified request is submitted.

Notification to the prime contractor/employer

The LSS/LCA will notify the prime contractor/employer in writing of the results of the LSS/LCA review and/or DOL decision and provide a copy of the DOL notice.

Requests for DOL reconsideration

The LSS/LCA, the prime contractor/employer, or other interested parties may request reconsideration of the DOL decision on a requested additional work classification and wage rate/fringe benefits. Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.





SANCTIONS AND RESTITUTION

Introduction

Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, “things going wrong” usually means there’s a difference of opinion or a dispute about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before DOL, or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of the things you might expect, and what you can do to make your views known and to lessen any delays in resolving the problem or issue.

Administrative Review on Labor Standards Disputes

The labor standards clauses in the contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

Additional classifications and wage rates

Additional classification and wage rate requests are sometimes denied by DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.

Reconsideration

DOL normally identifies the reasons for denial in its response to the request. Any interested person (e.g., the contract administrator, employer, or representatives of the employees) may request reconsideration of

the decision on the additional classification request.

The request for reconsideration must be made in writing and must thoroughly address the denial reasons identified by DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to DOL. (See DOL Regulations 29 CFR § 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through HQLS (Headquarters Office Davis-Bacon and Labor Standards).

Administrative Review Board

Any interested party may request a review of the Administrator’s decision on reconsideration by DOL’s Administrative Review Board. DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (See also 29 CFR § 1.9.)

Findings of underpayment

Compliance reviews and other follow-up enforcement actions may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due, and to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with employers to reach such agreements.

Rulings and interpretations unrelated to findings of underpayment

DOL is the authority for rulings and interpretations unrelated to findings of underpayments. This includes disputes concerning the prevailing wage rates as determined by DOL, DBRA applicability, character of work decisions, and interpretation and application of DOL regulations at 29 CFR Parts 1, 3, and 5. These and other such matters must be referred to the DOL Wage and Hour Administrator for their ruling and/or interpretation per 29 CFR § 5.13. Any request for a ruling or an interpretation from the DOL Administrator via DBLS must be submitted through HQLS with a copy to the local LSS.

Disputes concerning findings of underpayment

Underpayments usually occur when a contractor or subcontractor does not properly pay wages according to the approved wage determination and it has been identified as part of a Davis-Bacon and DBLS enforcement action. There may be other situations that also create underpayments, and they can originate from the employer, prime contractor, or any other interested party. Any underpayment decision by DBLS will include a formal decision letter with a Notice of Right to Appeal.

DOL review

DOL will review the contract administrator's report and the arguments against the findings presented in the hearing request. DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by DOL of the results of its review. If DOL concludes that violations have occurred, you will be given an opportunity to correct any underpayments or to request a hearing before a DOL ALJ. (See DOL Regulations 29 CFR § 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings.)

Administrative Review Board

Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

Withholding

The contract administrator shall cause the withholding of payments due to the prime contractor to ensure the payment of wages that are believed to be due and unpaid (e.g., if wage underpayments or other violations are not corrected within 30 days after written notification to the prime contractor). DOL may also direct the withholding of contract payments for alleged wage underpayments. Withholding is serious and is not taken unless warranted. If withholding is deemed necessary, the contractor will be notified in writing. Only the amounts needed to meet the contractor's (and/or subcontractors') liability shall be withheld.



Deposits and Escrows

In some situations, certain labor standards issues are not or cannot be resolved in time to meet project closeout schedules. In order to permit a final closing/closeout to proceed while certain labor issues are outstanding, a deposit account (HUD-administered projects, e.g. multifamily housing-insured and grant programs) or an escrow account (LCA-administered projects, e.g., CDBG, HOME, HOPE VI (Housing Opportunities for People Everywhere)) may be established as a guarantee to ensure the payment of any wages that have been or may be found due to workers that were employed in the construction of the project. Deposit and escrow accounts may also hold fringe benefits payments that are due to plans or programs and/or liquidated damages that are assessed for violations of CWHSSA O/T provisions. The deposit or escrow account is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

MORE INFO

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See 3.2, Responsibilities of the Principal Contractor, and 12.4, Restitution for Underpayment of Wages, in the Agency Guide.

Where the parties have agreed to amounts of wage restitution that are due, but the employer hasn't furnished evidence yet that all the underpaid workers have received their back wages (e.g., unfound workers)

The amount of the deposit is equal to the total gross amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who cannot be located are held in the deposit/escrow account for three years and disposed as described in Section 11.4.1 of this Guide;

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot be located. After wage restitution has been paid to all the workers who could be located, the employer must submit a list of any workers who could not be found and paid (unfound workers). See 12.4.6 in the Agency Guide for more information.

Where underpayments are suspected or alleged and an investigation has not yet been completed

The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be paid by the employer. As these workers are paid and proper



documentation is provided to the contract administrator, the gross amounts corresponding to the documented payments are returned to the depositor;

If the employer is unable to make the payments to the workers (e.g., lacks the funds necessary), the contract administrator may make disbursements directly to the workers in the net amounts calculated by the employer. The amounts withheld from the workers for tax deduction will be returned to the employer as payments to workers are made. The employer shall be responsible for reporting and transmitting withholdings to the appropriate agencies.

If the employer is not cooperating in the resolution, the contract administrator shall make disbursements to the workers in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described in Section 13.4.6 in the Agency Guide.

If the parties do not agree and an administrative hearing is requested, the escrow will be maintained.

MORE INFO

Remember, if you have any questions or need assistance concerning labor standards requirements, help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Standards staff in your area.

Where the parties are waiting for the outcome of an administrative hearing that has been or will be requested contesting a final determination of wages due

The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Administrative Sanctions

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or DOL.

DOL debarment

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the DBRA will be ineligible (debarred) to participate in any DBRA or Davis-Bacon Act contracts for up to three years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or initiated by DOL. Debarment proceedings are described in DOL regulations 29 CFR § 5.12.

HUD sanctions

HUD sanctions may include Limited Denials of Participation (LDPs), debarments, and suspensions.



Limited Denial of Participation

HUD may issue to the employer an LDP, which prohibits the employer from further participation in HUD programs for a period of up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDPs are found at 24 CFR §§ 24.700-24.714.

Debarment and suspensions

In certain circumstances, HUD may initiate its own debarment or suspension proceedings against a contractor and/or subcontractor in connection with improper actions regarding Davis-Bacon obligations. For example, HUD may initiate debarment where a contractor has been convicted for making false statements (such as false statements on certified payrolls or other prevailing wage certifications), or initiate suspension where a contractor has been indicted for making false statements. HUD regulations concerning debarment and suspension are found at 24 CFR Part 24.

Falsification of Certified Payroll Reports

Cases that involve certified payroll falsification may be referred to DOL for its investigation at the outset or referred to DOL for administrative review/hearings or other sanctions.

All referrals suggesting consideration for criminal prosecution must be submitted through the established hierarchy:



States may submit any such recommendation to DOL directly.

MORE INFO

Remember, if you have any questions or need assistance concerning labor standards requirements, help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Standards staff in your area.

