

## CHAPTER 10

# CONSTRUCTION MANAGEMENT AND LABOR STANDARDS

### INTRODUCTION

This chapter describes the policies and procedures that must be followed when undertaking construction projects with Community Development Block Grant (CDBG) funds, which include federal labor standards, payroll requirements, pre-construction conferences, and other requirements. Compliance with federal labor standards requires recipients, contractors, and subcontractors to meet and document compliance with the federal requirements associated with the employment of workers on construction projects. The Grantee (UGLG) must appoint a Labor Compliance Officer for oversight and to ensure compliance with the Davis-Bacon Act and other labor related laws. The UGLG should notify the Michigan Economic Development Corporation (MEDC) prior to the bidding of any project.

The chapter also discusses some of the State of Michigan's Labor Standards and their applicability to the MEDC funded CDBG projects. In particular, the chapter outlines those instances where the State of Michigan standards are substantially the same as the federal standards but separate or duplicate reporting is required, those instances where the State standards may actually exceed the federal requirements, and those instances where projects may be exempt from the Davis-Bacon Act but nonetheless covered by the State requirements.

A good resource for Labor Compliance Officers and contractors is Making Davis-Bacon Work, A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects. This publication was recently updated in January 2012. A copy may be obtained from the US Department of Housing and Urban Development's (HUD) Customer Service Center at 1-800-767-7468.

### SECTION 1 – DAVIS-BACON ACT REQUIREMENTS

The Davis-Bacon Act (DBA), enacted by the United States Congress, covers contracts that are directly federally funded. After the DBA was enacted, Congress extended the reach of its provisions by passing Davis-Bacon Related Acts (DBRA), which cover contracts that are indirectly federally financed (or assisted) in whole or in part. The CDBG program is funded through HUD. Thus, most of the CDBG program's construction contracts are indirectly federally funded and subject to DBRA. DBA and DBRA are basically the same in substance and purpose. This chapter and its attachments will use the term DBRA to refer to the Davis-Bacon Act, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

DBRA requires the payment of locally prevailing wages to laborers and mechanics for on-site construction, alteration, or repair on federally financed projects having contracts in excess of \$2,000. Locally prevailing wages are determined for specific employee classifications by the U.S. Department of Labor (DOL) and made available to the public as "wage decisions." A contractor(s) on a CDBG project covered by DBRA must meet, at a minimum, the wage requirements set forth in the wage decision(s) applicable to the project.

### EXCEPTIONS

1. Contracts solely for demolition, when no federally funded construction (which would require prevailing wage rates) is anticipated on the site.
2. Rehabilitation of a residential structure or residential properties, under one ownership, that will contain less than eight (8) units when completed.
3. Construction work done by employees of the UGLGs (i.e. the local government agency).
4. Machinery and equipment purchases, including installation, where the cost of installation is less than 20% of the total cost of the machinery and equipment.

5. Employees of utilities are exempt providing they are only extending service to the property.
6. UGLGs in Michigan must obtain approval from the MEDC before making a final determination that the contracts they intend to let are, in fact, not covered by DBRA. This approval should come as a part of the approval process after the UGLG has had their Part 2 application submitted. It is important that this determination be made relatively early on in the process to ensure that any construction cost estimates reflect the full costs of the labor force to be engaged.
7. Construction work that is not funded with CDBG funds (i.e. private funds) is not subject to the DBRA requirements if the CDBG funded construction activity is not on the same site of work as the privately funded construction. Example: If privately funded interior construction is done on the same building where CDBG funded façade work is being done, then the DBRA requirements are applicable to the privately funded interior work as well. If the CDBG funded activity does not involve construction, then the privately funded construction activity is not subject to the DBRA requirements. Contact your Program Specialist if there is clarification needed on this.

## DBRA REQUIREMENTS

1. **Source of Wage Decisions.** The responsibility of determining prevailing wages is delegated to the DOL. To meet this responsibility, DOL surveys contractors on construction projects to determine the prevailing wages for each locality. DOL then issues wage decisions for each locality. The terms wage decision and wage determination have the same meaning and are used interchangeably.
2. **Obtaining a Wage Decision.** A wage decision is a document listing a minimum wage rate and fringe benefits for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction. A Wage Decision example is provided as Attachment 10-B. The minimum pay requirements are referred to as prevailing wages. Recipients must obtain wage rate decisions from DOL prior to bid advertisement, and these determinations must be included in bid documents and the construction contract. There are two ways recipients can obtain wage rate determinations:
  - a. Recipients with Internet access can obtain their own wage rate determinations directly from the Wage Determinations Online website at <https://sam.gov/content/wage-determinations>. Recipients must obtain the correct wage rate determination for each labor category based on project location, construction type, and date. The correct wage rate determination should be printed and included in the bid document.
  - b. Should there be no general wage decision for the project area, the request for a wage rate determination should be submitted to MEDC at least 10 days in advance of the bid advertising date. MEDC will request the project decision and forward the decision to the UGLG. The project decision will be forwarded to the UGLG for inclusion in the bid document. UGLGs may also obtain wage rate determinations by submitting a request to the Program Specialist using a Request for Wage Determination Form (Form 10-C).
  - c. If a General Wage Decision is available, the UGLGs may request an approval of the wage decision from the Program Specialist within MEDC. It may take approximately seven days to receive the requested approval. The wage decision must be included in the bid document.
3. **Wage Decision (s) as Part of the Construction Contract.** DBRA requires that each prime contract over \$2,000 that is assisted by federal funds for construction, alteration, or repair of public buildings or public works, contain the applicable DOL wage decision(s). Most CDBG projects, except for smaller housing projects, are covered. Subcontracts are also subject to DBRA by a required contractual agreement containing prevailing wage provisions between the prime contractor and subcontractor(s). If any portion of a contract is subject to DBRA, then all work under that contract, including the work of subcontractors, is subject to DBRA. This is a critical requirement that could be overlooked.
4. **Choosing and Downloading the Proper Wage Decision.** To obtain the appropriate type of wage decision, the UGLG should be familiar with the four types of decisions. Factors to consider when choosing a wage decision include: (a)

decision type—whether building, highway, heavy, or residential; (b) project location; and (c) special characteristics of the project (such as elevated or ground storage tank).

- a. **Building.** The construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This type includes the construction of such structures, the installation of utilities, and the installation of equipment above and below the grade level, as well as incidental grading and paving. Structures need not be habitable to be considered as building construction.
- b. **Highway.** The construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects that are not incidental to building or heavy construction.
- c. **Heavy.** The construction of projects that cannot be classified as building, residential, or highway.
- d. **Residential.** The construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes incidental items such as site work, parking areas, utilities, streets, and sidewalks.

THE FOUR DECISION TYPES BASED ON NATURE OF CONSTRUCTION			
Building	Highway	Heavy	Residential
Alteration or addition to buildings	Curbs	Drainage projects	Apartment buildings (four stories or less)
Fire stations	Concrete pavement including sidewalks	Pumping stations (prefabricated drop-in units— not buildings)	Married student housing
Hotels and motels	Parking lots	Sewers (sanitary, storm, etc.)	Multi-family houses (eight or more)
Power plants	Street reconstruction	Sewer collection and disposal lines	Town or row houses
Prefabricated buildings	Roadbeds	Water storage tanks	Single family houses (eight or more under one contract)
Remodeling, repairing, renovating buildings	Shoulders	Water and sewage treatment plants (other than buildings)	
Warehouses	Street paving	Water mains	
Water and sewage treatment plants (buildings only)		Projects not included in any other Wage Decision	

- 5. **Multiple Wage Schedules.** Most CDBG assisted projects fit in a single construction category and multiple schedules are generally not allowed, except where the activities are substantial construction elements and not incidental. Substantial is generally defined by DOL as more than 20% of total project cost.
- 6. **Ten Day Responsibility.** It is the UGLG’s responsibility to ensure that the wage decision that is in effect 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum and sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids, prior to bid opening, based on the updated wage decision.
- 7. **Ten Day Options.** The “10 Day Call” (see Attachment 10-D) is one option that the UGLGs may use to determine whether a wage decision has been updated since the bid package was prepared. The 10 Day Call is simply a telephone call made by the UGLG to MEDC 10 days before the bid opening date. If the day on which the call should be made falls on a weekend, then the call should be made on Friday or Monday. MEDC will then examine the website at <https://sam.gov/content/wage-determinations> to determine if there have been any updates. If there has been an update, the UGLG must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package. MEDC will enter the optional 10-day call into grant records. It is important to remember that any addendums to a bid package be received at least 72 hours prior to the bid opening.

- a. The “10-day search” is another option that the UGLGs may use to determine whether a wage decision has been updated since the bid package was prepared. The UGLG may search the DOL website at <https://beta.sam.gov/> to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date. If there has been an update, the local government must obtain (download) the updated wage decision and send a copy by addendum to all who obtained a bid package as well as notifying the Program Specialist via e-mail that a website search was done and whether or not an update was found. If an update was found, the UGLG should convey to the Program Specialist the wage determination number and modification number.
  - b. Determining which wage decision applies to the bid and a contract document takes knowledge of DBRA and skill in the use of the DOL website. To prevent an incorrect wage decision from becoming part of a construction contract, MEDC will review and verify the wage decision choice when the local government requests verification of contractor eligibility.
8. **Failure to Include or Use of Incorrect Wage Decision.** Failure to include the effective wage decision in bid documents or contracts will not relieve local governments from potential liabilities or enforcement actions resulting from the payment of wages below the prevailing wage rates. In cases of an incorrect decision or failure to include a decision, the local government must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract that makes the effective wage decision retroactive to the beginning of construction.
  9. **Retroactive.** If the recipient fails to include the wage decision, or for any reason the wrong wage decision is included in the contract, the applicable wage decision reflecting the proper rates must be incorporated into the contract and be retroactive to the beginning of the construction. The recipient can either terminate and re-solicit or incorporate the wage decision by change order, provided the contractor is compensated for any increases in wages resulting from the change.
  10. **Contract Award Delays.** If a wage decision has been issued, and if a contract has not been awarded within 90 days of bid opening, or if construction has not begun within 90 days of contract award, the recipient should check the Wage Decisions Online website or contact MEDC to determine if the wage decision is still prevailing and if there have been any modifications issued.
  11. **Noncompliance.** Noncompliance with the labor standards contract provisions may result in withheld funds, sanctions, or contract termination.

## SECTION 2 – THE COPELAND "ANTI-KICKBACK" ACT

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports (CPRs) by all contractors and subcontractors. All contracts for construction, reconstruction, or repair over \$2,000 on federally assisted projects must include the following prohibition:

“No contractor or subcontractor shall induce, by any means, any person employed in such publicly-funded construction, reconstruction or repair to give up any part of the compensation to which he is otherwise entitled except for authorized payroll deductions.”

UGLGs should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records, and to submit weekly certified payrolls documenting compliance. The Copeland Anti-Kickback Act requires that payment to employees must be made at least once a week without subsequent deductions or rebate on any account except "permissible" payroll deductions. The recipient must obtain payrolls and a

Statement of Compliance from contractors and subcontractors weekly. The UGLG must check these payrolls for accuracy. Each employer and the UGLG must maintain the basic records supporting the payrolls until notified by the MEDC.

### **SECTION 3 – CONTRACT WORK HOURS & SAFETY STANDARDS ACT (CWHSSA)**

The Contract Work Hours and Safety Standards Act (CWHSSA), (pronounced “kwas-sa”) (40 U.S.C. §327 et seq.), applies to federally financed (in whole or in part) contracts over \$100,000, and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of 40 hours weekly. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as to the United States for liquidated damages computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

Contractors and subcontractors must be advised in writing that, if they are aggrieved by the withholding of a sum of liquidated damages, they have the right to appeal within 50 days. A written appeal must state the reason for liquidated damages and should be addressed to the Program Specialist.

#### **SAFETY STANDARDS**

Safety Standards provisions require contractors on covered projects to comply with the following:

- Safety standards provisions of applicable laws, building, and construction codes, the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970, and the requirements of Title 29, Section 1518.
- Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at the construction office or other well-known place on the job site, all articles necessary for giving first aid to the injured, and make standing arrangements for the immediate removal to a hospital or to a doctor's care those persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor's care.

### **SECTION 4 – THE FAIR LABOR STANDARDS ACT (FLSA)**

The Fair Labor Standards Act (FLSA) contains federal minimum wage rates, overtime (O/T) requirements, and child labor requirements. These requirements generally apply to any labor performed (i.e. with or without federal assistance) and are generally pre-empted (or superseded) by other federal standards, such as the DBRA and related prevailing wage requirements and Contract Work Hours and Safety Standards Act O/T provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations found on HUD projects.

### **SECTION 5 –GENERAL LABOR REQUIREMENTS**

DOL guidelines include additional requirements as listed below. UGLGs should note that they are responsible for ensuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in contracts, as well as monitoring by the recipient, is therefore very important.

#### **COMPLIANCE RESPONSIBILITY**

The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with all labor provisions and other federal or State requirements. Subcontractors communicate through the prime contractor. The UGLGs will consider the prime contractor to be the sole point of contact with regard to contractual matters.

**RECORDS AVAILABILITY**

The contractor must make pertinent records available for review and permit on-the-job interviews of employees. Contractors must maintain all job-related files and documents for three years after completion of project.

**MONITORING**

The UGLG must monitor the construction and conduct on-the-job wage interviews with a representative number of workers on the job site, and from a representative sample of trades. The results should be compared to the applicable payrolls for the date the interview was conducted to determine if there are any discrepancies. Depending on the length of the contract period, whether subcontractors are used, or whether different workers are utilized over the life of the contract, it may be appropriate to conduct interviews on multiple occasions to ensure the samples are representative. A suggested Record of Employee Interview Form (HUD-11) is included as Form 10-O at the end of this chapter. The recipient may use this form or a facsimile to gather the required information. The MEDC, in its oversight capacity, may visit the work site or the UGLG's offices, and may review the UGLGs' files to determine if the project is fulfilling its responsibilities under the federal labor standards. In such instances, the MEDC will provide the UGLGs and its agents at least 10 days' notice of its intentions.

**NONCOMPLIANCE**

Contractors and subcontractors may be terminated for noncompliance and will be liable for any excess cost involved in completing the work.

**CONTRACTOR ELIGIBILITY**

Prior to awarding any prime contract, UGLGs must verify the eligibility of the prime contractor and document in the file. Subcontractor eligibility is the responsibility of the prime contractor and should be addressed at the pre-construction conference. Contractor eligibility may be checked on-line at [www.sam.gov](http://www.sam.gov) and the Limited Denial of Participation (LDP) list at [https://www5.hud.gov/ecpcis/main/ECPCIS\\_List.jsp](https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp)

**APPRENTICES**

The contractor must furnish a certification from the DOL Bureau of Apprenticeship and Training or a Bureau of Apprenticeship and Training recognized state apprenticeship agency for each apprentice employed on the project. All apprentices and trainees must be identified in each payroll submission. The ratio of apprentices to journeymen must not exceed the approved ratio under their respective program, and their wage rate must not be less than prescribed under those programs.

**VOLUNTEERS**

Exceptions to the labor requirements are made for volunteer services on a case-by-case basis. UGLGs should contact MEDC for approval.

**HELPERS**

Federal labor standards do not recognize the "helper" classification. A contractor must re-classify any employee listed as a helper on weekly payrolls with a classification listed on the appropriate wage decision.

**REQUIRED POSTINGS**

The wage decision and any additional wage classifications labor posters must be displayed in a prominent place on the job site. The posters may be downloaded from the following DOL website and include:

- Your Rights under the Family and Medical Leave Act of 1993 (WH-1420): <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>
- Federal Minimum Wage (WHD-1088): <http://www.dol.gov/whd/regs/compliance/posters/minwagep.pdf>
- Notices to All Employees Working on Federal or Federally Financed Construction Projects (WH-1321): <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
- Equal Opportunity: <http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>

## **SECTION 6 – CONTRACT AWARD AND PRE-CONSTRUCTION CONFERENCE**

### **BID TABULATION**

The UGLGs must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project to the MEDC.

### **PRE-CONSTRUCTION CONFERENCE**

Following contract award, the recipient must hold a pre-construction conference with the prime contractor and any subcontractors. The purpose of the pre-construction conference is to apprise the contractor and subcontractors of labor standards, equal opportunity, and other contract obligations and responsibilities. The conference allows an opportunity to obtain any outstanding contract documents and provide the contractor with posters for the construction site. It also provides an opportunity for the engineer to discuss construction related issues.

## **SECTION 7 – WEEKLY PAYROLL REQUIREMENTS**

### **PAYROLL TERMINOLOGY, REQUIREMENTS, AND REVIEW PROCEDURES**

DOL provides a sample payroll form along with instructions at <http://www.dol.gov/whd/forms/wh347instr.htm>. A Payroll Review Flowchart is provided as Attachment 10-I at the end of this chapter.

### **RESPONSIBILITY OF PRIME CONTRACTOR REGARDING SUBCONTRACTORS**

The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the local government and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions (Attachment 10-J). If the required provisions are not included in a subcontract, the prime contractor is responsible for underpayments and liquidated damages of subcontractors.

When labor standards violations occur, whether at the contract or subcontract level, the UGLGs will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

### **WEEKLY PAYROLL SUBMISSION REQUIREMENTS AND PAYROLL NUMBERING**

It is the weekly responsibility of each contractor to submit to the local government numbered weekly payrolls from the time work begins on the project until the work is completed. If no work is performed on the project during a given workweek, payrolls do not have to be submitted; however, the UGLGs should be informed by phone or e-mail that no work was performed. Once work resumes, contractors should use the next consecutive number. For example: If work was performed during weeks one, two, three, and seven, the payroll number for week number seven would be Payroll #4.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the subcontractor's payrolls and may require corrections. The prime contractor forwards the subcontractor's payroll(s) to the UGLGs. Payrolls may be collected by the project engineer for submission to the UGLGs; however, this does not relieve the prime contractor of responsibility for review of payrolls.

### **PAYROLL FORMS**

Contractors may use the payroll form, DOL publication WH-347, which is designated as Form 10-K. This form is available on DOL's website at [www.wdol.gov](http://www.wdol.gov) and typing "WH-347" in the search box. However, the results of the search do not provide a "form-fill" version of the document. The DOL instructions for WH-347 are also available on the website but are outdated regarding the overtime requirement after eight hours. The current DOL (and CDBG) requirements call for overtime after 40 hours in a given workweek. The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called the Statement of Compliance. The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items of Form 10-K are included, but the wording of the Statement of Compliance must be verbatim.

**ADDRESSES AND SOCIAL SECURITY NUMBERS**

Effective January 18, 2009, payrolls shall not report employee addresses or full social security numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last four digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

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(s) to provide this information for the prime contractor's records. DOL has modified Form WH-347, Payroll, to accommodate these reporting requirements.

**SIGNATURE ON THE STATEMENT OF COMPLIANCE**

The Statement of Compliance must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.

**PROMPT SUBMISSION OF PAYROLLS**

The UGLGs should require that all payrolls, from the prime contractor and any lower tier subcontractor, be submitted by the prime contractor to the local government within seven working days after the payroll ending date. Payrolls must be examined promptly by the UGLGs so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to ensure that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. All reviewed payrolls along with a Payroll Review Worksheet (Form 10-L) should be submitted to the MSF throughout the grant. If acceptable payrolls are not submitted in a timely manner, the local government may withhold contractor payment until acceptable payrolls are submitted.

**SUBCONTRACTOR COMMUNICATION**

The UGLG's contractual relationship is between the local government and the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, a direct relationship between the local government and subcontractor does not exist. Even though a direct contractual relationship does not exist, the MEDC recognizes the following conditions under which the local government may communicate directly with a lower tier subcontractor regarding labor standards deficiencies: (a) the prime contractor agrees; (b) the subcontractor is cooperative; (c) the issues are not complex; and (d) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.

**CONCURRENT JOBS**

The payrolls must show only the regular and overtime hours worked on the CDBG project. If an employee performs work at job sites other than the project for which the payroll is prepared, those hours should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

**Example.** Sid, a backhoe operator, gets off his backhoe to locate a buried sewer line. He uses a shovel most of the morning to locate the line. Later, Sid mounts the backhoe and digs a trench for a new sewer line. The employer may list Sid as a backhoe operator if Sid is paid the backhoe rate, which is the higher of the two possible rates.

**WAGE RATES AND PROPER CLASSIFICATION**

Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and time-and-a-half rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions. The UGLG must review all payroll documentation and complete a Payroll Review Worksheet, form 10-L, before submitting the payroll documentation to the MEDC.



**EMPLOYEES PERFORMING WORK IN MORE THAN ONE CLASSIFICATION**

A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called split payrolls may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure to avoid extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in a given workday.

**WORKING FOREMAN REQUIREMENTS**

A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under DBRA and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The working foreman, if paid a flat salary with salary designated on the payroll, must be making at least the minimum rate and fringe for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet DBRA and CWHSSA requirements.

**CLASSIFICATIONS**

Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if DBRA were met. For example, operator is a generic classification; however, backhoe operator is on the wage decision and would be a proper classification.

If, after obtaining the wage decision, it is found that a class of laborer or mechanic not listed in the wage determination is to be employed on the project, the UGLG must notify their Program Specialist in writing so that an effort can be made to conform the laborer or mechanic to a classification already existing on the decision. If a trade classification does not appear on the wage decision and the laborer or mechanic cannot be conformed, the UGLG must complete and submit to their Program Specialist a Report of Additional Classification and Rate (Attachment 10-M). This report should identify the classification needed, recommend a wage rate, and include supporting documentation, such as a copy of the Notice to Proceed issued to the contractor and statements from both the contractor and the employee agreeing to the proposed wage rate. Instructions for completing the Report of Additional Classification Rate can be found as Attachment 10-M.

In general, additional classifications and wage rates can be approved if:

1. The requested classification is used by construction industry in the area of the project. (The area is usually defined as the county where the project is located.) Classifications requested must identify the specific trade and should not involve generic titles such as operator, mechanic or installer. The work that will be performed by the requested classification is not performed by another classification already on the applicable wage decision.
2. The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.
3. The workers that will be employed in the added classification or the worker's representatives, if applicable, must agree with the proposed wage rate.

**FRINGE BENEFITS**

If the wage decision calls for fringe benefits to be paid on behalf of any employee who worked on the project, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued by the local government.

Fringe benefits do not appear on the worker's checks but are amounts paid to a receiving institution on behalf of the worker. Sometimes fringe benefits are confused with deductions. For instance, health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and paid for by amounts subtracted from the employee's gross wages would be a deduction.

Fringe benefits that are common to the construction industry may be credited toward meeting DBRA if they are paid to the employee in cash or into an approved fund, plan, or program on the employee's behalf.

If a wage decision contains fringe benefits for a classification used on the construction project, box 4a or 4b of the Payroll Form must be marked to indicate the method of fringe benefit payment, such as in cash or to an approved plan. If there were no classifications used on the project that required fringe benefits, the boxes should be left blank. Box 4c is used to denote exceptions to box 4a or 4b. For example, if all of the employees are paid fringe benefits in cash except one, who gets payment of fringes into an approved plan, box 4b would have been marked for payment of fringes in cash with box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are always calculated at a per-hour-worked rate and are not calculated at a time-and-a-half rate.

Flexibility is allowed in the allocation of how fringe benefits are paid. Using the above example, the contractor has flexible payment options such as (a) pay all of the \$632 in cash; (b) pay \$580 in cash and \$52 in fringes; or (c) pay more or less than \$580 in cash and more or less than \$52 in fringes with the total paid to be \$632.

On payrolls, it is helpful to list the regular pay rate separately but next to the fringe rate as follows: Regular rate/Fringe rate, \$10.00/\$1.00.

**Example.**

Pay requirement on wage decision: \$10 per hour

Fringe benefits requirement on wage decision: \$1 per hour fringe benefits

Workweek: 52 hours

Regular Pay + Overtime Pay + Fringe Benefits = Gross Pay

$(40 \times 10) + (12 \times 10 \times 1.5) + (52 \times 1) = \$632$

### VERIFYING FRINGE BENEFITS

Fringe benefits may be paid in cash and such payment(s) can be determined by examining the face of the payroll. When fringe benefits are paid in cash, box 4-b of the Statement of Compliance must be checked. Fringe benefits that are paid to an approved plan are not usually posted on the face of the payroll. When fringe benefits are paid to an approved plan, box 4-a of the Statement of Compliance must be checked. The fact that box 4-a is marked on the Statement of Compliance is acceptable to indicate that fringe benefits equal to the amount stated on the wage decision were paid. Most of the time, additional verification will not be necessary. Additionally, if the basic hourly rate is less than required on the wage decision with the obvious claim that fringes are making up the balance due in order to meet the total DBRA, verification of the payment of fringe benefits may be considered. In some cases, where problems are suspected, verification of the payment of fringe benefits may be necessary.

### FRINGE BENEFIT VERIFICATION

An approved plan will have an institution(s) that receives fringe payments on a regular basis. Fringe benefit payments into an approved plan may be made on a weekly, monthly, or quarterly basis, but not semi-annually or annually. The applicable contractor will be the source of contact information for the receiving institution. Verification should include the following: (a) institution's name(s); (b) phone number(s); (c) date(s) contacted; (e) results of the inquiry; (f) person(s) contacted at the institution; and (g) the name of the person who made verification for the local government. Verification may be made by phone, written correspondence, computer printout, or fax from a receiving institution, computer printout or fax from a union, or a copy of cancelled check(s) from the contractor written to a receiving institution.

A computer printout from the contractor is also acceptable as supporting evidence of payment of fringe benefits but does not relieve the UGLG of its responsibility to ensure that the proper payments are being made if there is any reason to suspect that they are not.

**DEDUCTIONS**

A deduction is an amount subtracted from a worker's gross wages. Deductions must be reviewed to determine if they are permissible. Permissible deductions by law include court ordered deductions, Federal Insurance Contributions Act (FICA), and federal or state income taxes. Deductions not required by law, such as union dues or uniforms, may be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. The Payroll Deduction Authorization Form, provided as Form 10-N, should be used.

**PAYROLL CERTIFICATION OF THE SELF-EMPLOYED CONTRACTOR WHO WORKS ALONE**

A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a working subcontractor, must be listed on the prime contractor's (responsible employer's) payroll.

**Example.** Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on a CDBG project. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages as well as the employee's wages.

The minimum information needed on the responsible employer's payroll regarding the working subcontractor are name, address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c may read something like, "Working sub, lump sum contract, fringes and deductions not applicable."

Sometimes it may be confusing for a prime contractor to list a working subcontractor on his payroll in addition to his regular employees. In such case, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor, using the payroll form in Attachment 10-K.

Whatever method of compensation is utilized, such as piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate that is not less than the prevailing hourly rate for the type of work involved.

A special exception for truck owner-operators is available. Truck owner-operators must be reported on the prime contractor's (responsible employer's) weekly payrolls but, unlike other classifications, do not need to show the hours worked or rates—only the notation owner-operator.

**LIQUIDATED DAMAGES**

Liquidated damages is a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the CDBG Program, is the penalty amount calculated for overtime violations under the CWHSSA. The pre-determined penalty is \$10 per worker, per day for overtime violation(s). Please note that penalty amounts paid for overtime violations to a specified government entity as liquidated damages are separate and distinct from wage restitution paid to workers. Liquidated damages are paid in addition to any restitution.

**SECTION 8 – JOB SITE VISITS AND EMPLOYEE INTERVIEWS**

The UGLG is required to conduct visits to the construction site to see if applicable DOL posters and the wage decision are posted. In addition, the labor standards requirements include periodic job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job regarding the hours they work, the type of work they perform, and the wage they receive.

Interviews should occur throughout the course of construction and include a sufficient sample of job classifications represented on the job, as well as workers from various companies to allow for a reasonable judgment as to compliance. Information gathered during an interview is recorded on the Record of Employee Interview (HUD-11), Form 10-O.

The interview should be conducted on the job site and privately as a one-on-one process. The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed. To initiate the interview, the authorized person shall:

- Properly identify himself/herself.
- Clearly state the purpose of interview.
- Advise the worker that information given is confidential, and his/her identity will not be disclosed to the employer without with the employee's written permission.

When conducting employee interviews, the interviewer should pay particular attention to:

- The employee's full name.
- The employee's permanent mailing address.
- The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not to other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum amount required by the wage decision.
- The interviewer should be sure the worker is not quoting their net hourly rate or take-home pay.

If it appears the individual may be underpaid, the interviewer should closely question the worker by:

- Asking for any records.
- Arranging to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observed duties and tools used.

If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to his classification, indicate the following on the Record of Employee Interview Form.

- If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
- Enter date interview took place.
- The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information.
- If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview Form and it should be signed by the appropriate person.
- If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.
- If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731, Form 10-P). The complaint must be investigated and resolved. Contact MEDC, which may engage HUD or DOL if necessary.

## **SECTION 9 – RESTITUTION FOR UNDERPAYMENT OF WAGES**

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

### **HANDWRITTEN CORRECTIONS OF PAYROLL BY REVIEWER NOT ALLOWABLE**

The local government, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. Such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the local government wishes to provide written clarification of a minor payroll item, a note with the reviewer's initials and date may be attached.

### THREE SCENARIOS OF PAYROLL REVIEW

Three scenarios regarding payroll review and corrective actions are identified in form 10-I, the payroll review flowchart. Each scenario triggers a unique set of events. Review the Payroll Review Flowchart for an overview of the processes involved. The three scenarios are as follows:

- Scenario One: Error that involves restitution.
- Scenario Two: Error that does not involve restitution.
- Scenario Three: Error not detected.

### NOTICE TO CONTRACTOR WHEN RESTITUTION IS INVOLVED

Scenario One deals with payroll errors that involve restitution due to underpayment of wages. Underpayment may result from either DBRA violation(s), CWHSSA overtime violation(s), or both. The local government must promptly notify the prime contractor in writing that payment of back wages is required. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid workers, the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll, as discussed below.

If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor of two choices regarding Liquidated Damages—pay or request a waiver.

### CERTIFIED CORRECTION PAYROLL

Under Scenario One, a payroll that reflects restitution paid under DBRA or CWHSSA is called a Certified Correction Payroll. Such a payroll will always be prepared by the employer and the Statement of Compliance will be signed by the employer. The signature on the Statement of Compliance designates the payroll a Certified Correction Payroll. A Certified Correction Payroll will only list those workers to whom restitution is paid. A Certified Correction Payroll may cover multiple weeks and must specify the weeks covered. The monetary amounts listed, wages, and deductions reflect restitution amounts paid, and should not indicate amounts paid and listed on past payrolls. Optionally, a Certified Correction Payroll may also cover one week at a time.

Payroll problems that require the employer to prepare a Certified Correction Payroll may include the following:

- Wage rates on the payrolls do not meet DBRA.
- Wage rates on the payrolls do not meet CWHSSA requirements.
- Worker classifications are wrong, incomplete, or not in accordance with the applicable wage decision resulting in restitution due.
- Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between amount paid and the required amount which should have been paid. The deficiency would be multiplied by the applicable number of hours worked at the lower-than-allowable rate.

**Example.** If a worker was paid \$10 per hour and should have been paid \$11 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be  $\$1 \times 100 = \$100$ .

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks for which it pertains, such as Weeks Two through Eight, and 11. A Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek, but must indicate the appropriate revision number, such as Payroll Eight, Revision One.

In most cases, the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to demonstrate that restitution was made. Cancelled checks, employee initials, or an employee statement are no longer routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required by the MEDC or other reviewing agency.

### THE USE OF CORRECTED PAYROLLS TO DEMONSTRATE RESTITUTION

Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:

- A corrected payroll is for one weekly period whereas a Certified Correction Payroll may cover multiple weekly periods.
- A corrected payroll lists all workers who worked on a project during a weekly period, whereas a Certified Correction Payroll lists only workers to whom restitution was paid.
- A corrected payroll lists the total hourly rate received from original pay rate plus the restitution rate, whereas the Certified Correction Payroll will list only the restitution pay rate.

If a contractor wishes to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature date must accompany the corrected payroll. The corrected payrolls should be numbered the same as the original incorrect payrolls such as Payroll Two, Revision One.

### CALCULATION OF LIQUIDATED DAMAGES

Under Scenario One, assuming there was restitution due that involved not only DBRA, but also overtime violation(s) under CWHSSA, overtime rates must be paid at 150% of the basic hourly rate. This is commonly referred to as time-and-a-half. Under CWHSSA, liquidated damages are computed at the rate of \$10 per worker for each calendar day the worker was required or permitted to work in excess of 40 hours in a week without payment of overtime rates.

MEDC must be informed immediately upon the occurrence of any of the above infractions.

**Example.** If workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The liquidated damages calculation would be \$30 per worker. Liquidated damages would be calculated in addition to the payment of wage restitution.

### STEPS IN CALCULATION, ASSESSMENT, PAYMENT, OR APPEAL OF LIQUIDATED DAMAGES

The local government calculates restitution and liquidated damages due, and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or corrected payroll with certification), and agree to either pay or request a waiver for liquidated damages. The contractor is to notify the local government of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Please contact the Program Specialist at the MEDC for instructions regarding a wire transfer. Such procedures involve filling out certain forms, some of which are sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD. The contractor will use a financial institution to conduct the wire transfer using a form prescribed by HUD. After the wire transfer and proper notification/documentation of such payment to all parties concerned, the contractor's responsibility for payment of liquidated damages will have been met. The financial institution may charge the contractor a fee for making the wire transfer.

If the contractor chooses to request a waiver (or reduction in penalty amount), the contractor is to send the local government written communication explaining the reasons why a waiver is requested. There are two reasons for HUD to grant a waiver:

- The error was unintentional although due care was exercised.
- A mathematical mistake was made.

The local government will forward the letter to the MEDC, who will send the letter to HUD. Following HUD's response, the MEDC will communicate HUD's response to the local government by traceable correspondence. The local government is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, call the Program Specialist at MEDC for further instructions. The contractor will have 60 days to appeal the notice from HUD.

**Example.** A laborer worked 48 hours in one work-week. He was paid \$10 per hour for 48 hours and time and one-half for overtime. The wage decision calls for \$11 per hour with no fringe benefits. Most payroll clerks would immediately know that \$52 or restitution is due; however, some may not realize the proper classification of each of the components of restitution. The proper classification would be \$48 under Davis-Bacon and \$4 under CWHSSA.

$48 \times \$1 \text{ plus } 8 \times 0.50 = \$52.$

Some payroll clerks may incorrectly classify \$40 under Davis-Bacon and \$12 under CWHSSA. When reporting components of restitution, the proper method is indicated in the previous paragraph.

### THE USE OF CORRECTED PAYROLLS WHERE RESTITUTION IS NOT DUE

Under Scenario Two, as shown in Form 10-I, restitution will not be due but still some correction (not involving restitution) to the payroll is necessary. A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll, such as Payroll Four, Revision One. The contractor may cross a line through the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature on a Statement of Compliance must be provided. One way to provide a new signature is by attaching a copy of the original Statement of Compliance with a new signature and date above the original signature. Optionally, the contractor may wish to prepare a new Statement of Compliance, signed and dated, for any week with a corrected payroll.

### SUPPLEMENTARY STATEMENTS

A supplementary statement from the contractor may be obtained to clarify minor issues. Situations where a supplemental statement would be acceptable include an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory, and also identify the relevant payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

### NO ERROR DETECTED

Scenario Three is identified as the scenario under which no error is detected.

### REPORTING REQUIREMENTS

See the Payroll Review Flowchart in Form 10-I, for a visual diagram illustrating the three scenarios of payroll review and the reporting requirements triggered by each scenario.

A Labor Standards Enforcement Report, Form 10-Q, is required when restitution, cumulatively for any contractor or subcontractor, reaches \$1,000 or more. Instructions for completing the form are included in Form 10-Q. It is possible that one CDBG project could trigger multiple Labor Standards Enforcement Reports.

The Labor Standards Enforcement Report is to be completed and sent to MEDC when most or all of the corrective action has been completed. For instance, if a contractor made restitution and chose to pay liquidated damages, the local government can wait until receipt of evidence of restitution, contractor's letter agreeing to pay liquidated damages, and payment of the liquidated damages before sending MEDC the enforcement report. In such a case, the letter from the contractor agreeing to pay liquidated damages, evidence of the wire transfer, and the Labor Standards Enforcement Report would be sent together, to MEDC.

The Labor Standards Enforcement Report should be sent before closeout documents are submitted, especially if a waiver of payment of liquidated damages is requested, as HUD may take up to a month to respond.

As indicated under all three scenarios in the flow chart, the Final Wage Compliance Report (Form 10-S) must be sent to MEDC as the last item regarding labor standards. The Labor Standards Enforcement Report may be necessary during the life of a project, whereas the Final Wage Compliance Report is always a necessary component of the close-out documents.

#### **REPORTING RESTITUTION UNDER DBRA AND CWHSSA**

In reporting restitution on the Labor Standards Enforcement Report or the Final Wage Compliance Report, it is important to correctly classify restitution. The DBRA component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked.

When reporting components of restitution, the proper method is indicated in the previous paragraph.

#### **WITHHOLDING FUNDS BASED ON NONCOMPLIANCE WITH LABOR STANDARDS**

If violations regarding restitution have not been corrected within thirty calendar days from the date of the first notice of underpayment, the local government may withhold funds due the prime contractor. MEDC must be notified immediately of any violations requiring restitution. Only an amount considered necessary to ensure payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld. If it is necessary to estimate the withholding amount, prompt action must be taken to determine an exact amount and disburse any applicable excess to the prime contractor according to invoices presented for payment. The local government must notify the prime contractor of the withholding and provide the second notice of underpayment. The local government must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed. If restitution is not made within 30 days of the second notice of underpayment or if there is disagreement regarding the finding of wages owed, MEDC must be notified immediately.

If MEDC determines it appropriate, the local government will be notified to disburse wages owed from the withheld funds to the respective workers to whom they are due. Should such an occasion arise MEDC must be contacted for information on the proper procedure for disbursement of funds.

#### **WITHHOLDING FUNDS BASED ON NONCOMPLIANCE WITH CDBG REQUIREMENTS**

If a Labor Standards violation(s) does occur that results in the local government not being in compliance with the approved CDBG program, the MEDC may suspend payment on the next Request for Payment. For example, if the local government fails to ensure the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the local government may be considered as being in noncompliance with CDBG program requirements.

#### **UNFOUND WORKERS**

If all affected workers cannot be located and restitution made, either by the contractor directly or through use of withheld funds, enough funds must be reserved in the special account to pay those workers the wages owed. Efforts should continue to be made to locate workers; however, if they have not been located by the time of grant close-out, the local government must return the withheld funds to MEDC. A check made payable to the State of Michigan, and a Labor Standards Enforcement Report (Form 10-Q) covering the remaining withheld funds must be submitted to MEDC before the grant will be closed.

#### **FALSIFICATION**

If intentional falsification by a contractor is suspected, the local government's Labor Compliance Officer must not return the payroll to the contractor for correction and resubmittal. MEDC must be informed of the suspected falsification.

#### **PAYROLL RETENTION**

Payroll records must be retained by the local government for a period of four years from the date of the letter indicating "Final Close" of the CDBG program relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of MEDC, HUD, and DOL.

#### **FINALIZING LABOR COMPLIANCE**

The Final Wage Compliance Report, Form 10-R, must be approved by the Program Specialist before the grant can be closed out. If there are unresolved labor compliance problems at that time, the MEDC Labor Compliance Officer will assist the local government in determining how to correct such problems.



## **SECTION 10 – PROGRESS INSPECTIONS, CHANGE ORDERS, FINAL INSPECTION**

### **CHANGE ORDERS**

It is not uncommon for circumstances to require modifications to various construction contracts. The architect/engineer or project inspector usually prepares change orders; however, the UGLG must approve and authorize change orders before they are given to the contractor and executed. The proposed change should also be verified and/or recommended for approval by the project engineer, Program Specialist, architect, or other technical support personnel. The recipient should compare such change orders to the CDBG construction budget prior to approval.

NOTE: If the change order would cause any change in a budget line item, scope of project, or change in beneficiaries, the UGLG must request a contract modification from MEDC. The UGLG may approve such a change order only after MEDC approves a contract modification. This requirement is enacted to ensure that the project does not risk becoming ineligible or result in the UGLG not achieving its required overall income targeting.

All change orders must contain a unit price and total for each of the following items:

- All materials with cost per item.
- Itemization of all labor with number of hours per operation and cost per hour.
- Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits, and overhead costs.
- Profit for the construction contractor.
- Inspections.

The architect/engineer must conduct periodic inspections of the contractor's work for compliance with specifications, drawings, and conditions of the contract. These inspections must be documented in writing and kept in the CDBG project files. Comparing inspection reports to payrolls is also a good way to monitor labor standards. Prior to approval of progress payments to contractors, the UGLG must make sure all work is completed as stated; that all payrolls have been submitted and are accurate and complete; wage violations are corrected and any restitution paid; and that all charges are allowable.

### **RETAINAGE**

UGLGs may withhold at least 10% of each progress payment until the end of the project to ensure funds are available to address any unanticipated issues (e.g., payroll issues, insufficient progress, etc.).

### **FINAL PAYMENT REVIEW**

When construction work has been completed, the contractor must certify completion of work to the recipient and submit a final request for payment. Before work is accepted and final payment is made to the contractor, the recipient should verify that:

- All payrolls have been received and checked, and any necessary restitution has been made.
- All other required Equal Opportunity and Labor Standards provisions have been satisfied.
- All contract submissions have been received.
- All claims and disputes involving the contractor have been resolved.
- Files are complete.
- As-built plans have been filed with the recipient, if applicable.

### **RECORDKEEPING**

- Designation of a local Labor Standards Compliance Officer
- Request for Wage Determination
- Wage determinations, modifications, and additional classifications
- Federal Labor Standards Provisions
- Evidence of the 10-Day Call
- Verification of contractor eligibility
- Evidence of Bid Opening (tabulation and minutes)

- Notice of Contract Award
- Contractor's License Forms
- Notice to Proceed
- Notice of Pre-construction Conference (minutes)
- Contractor's and subcontractor's weekly payrolls and Statements of Compliance signed by an officer of the company
- Evidence of apprenticeship/trainee registration and certification that apprentice or trainee rates were paid
- Payroll deduction authorizations
- Employee interviews
- Evidence indicating that the federal wage determination and the Labor, Equal Opportunity, and Safety posters were posted
- Evidence of restitution, if any
- Complaints from workers, if any, and actions taken
- Labor Standards Compliance Report(s), if any
- Final Wage Compliance Report

#### **CHAPTER 10 FORMS**

- 10-A Chapter 10 PowerPoint Presentation
- 10-B Wage Decision SAMPLE
- 10-C Request for Wage Decision
- 10-D Ten Day Call Form
- 10-E Notice of Contract Award
- 10-G Handout of Frequently Asked Questions on Equal Opportunity
- 10-I Payroll Review Flowchart
- 10-J Federal Labor Standards Provisions, HUD-4010
- 10-K Payroll, WH 347
- 10-L Payroll Review Worksheet
- 10-M Report of Additional Classification and Rate, HUD-4230A
- 10-N Payroll Deduction Authorization
- 10-O Record of Employee Interview, HUD-11
- 10-P Federal Labor Standards Complaint Intake Form, HUD-4731
- 10-Q Labor Standards Enforcement Report
- 10-R Final Wage Compliance Report
- 10-S Semi-Annual Labor Standards Enforcement Report, HUD-4710