



PROGRAM SERVICES DIVISION

DAVIS-BACON – LABOR STANDARDS GUIDE

Development Owners awarded Federal funds in multifamily contracts by the Texas Department of Housing and Community Affairs (the Department) must comply with Davis-Bacon Labor Standards administrative and enforcement responsibilities if the following thresholds apply:

Thresholds

- **HOME Contract** – Applicant/ Developer will use funds to acquire and/or construct and/or rehabilitate a single residential project consisting of twelve (12) or more HOME-assisted units.
- **TCAP-Contract** – Pays \$2,000 or more for construction. Enforcement begins on date of TCAP award. There are no unit or soft-cost thresholds/limitation; applies to Project of any number of units, even if units are rent restricted. A project may be in construction or 100% complete at the time of TCAP award. If project is in construction at the time of TCAP award, Davis Bacon prevailing wage rates are applied prospectively. A project is *exempt* from Davis-Bacon compliance if construction is 100% complete on date of TCAP award. Owner/Developer must submit Certificate of Substantial Completion (AIA form G704) and/or Certificate of Occupancy as verification.
- **CDBG Contract** – CDBG funds construct and/or rehabilitate a residential rental project containing eight (8) or more units. Owner-occupied single family dwellings are *exempt*
- **NSP1 Contract** – NSP funds rehabilitate residential property consisting of eight (8) or more single-family units, commonly owned, on contiguous lots, for *rental* purposes – **DB applies**. Stand-alone single family units (not in condominium or cooperative ownership) rehabilitated for homeownership purposes are *exempt*. With homeowner unit(s) in a condominium or cooperative property, consisting of eight (8) or more units, **DB applies**. Demolition funded by NSP with intent to build project that may invoke Davis-Bacon, demolition work requires Davis-Bacon compliance.
- **HTF Contract with Federal Investment** – Federal funds that supplement a Project funded by HTF (State funds) trigger Davis-Bacon compliance. *If HTF provides sole source, project does not invoke labor standards compliance but Owner/Developer must receive Notice To Proceed (See – Step 4) prior to starting construction.*

Development Owner/Developer subject to the Davis-Bacon Act (DBA) and Related Acts (DBRA) labor provisions takes responsibility for labor standards compliance and must adhere to the Department's established procedures listed below:

Step 1. Appointment of Labor Standards Officer by Owner/Developer

Prior to loan closing or start of project construction, Developer/ Owner must designate a Labor Standards Officer (LSO) The LSO administers labor standards compliance at the Project and Owner/Developer's place of business and serves as liaison to the Department. Owner/Developer must submit the completed

Visit www.hud.gov/offices/olr/library.cfm for information on compliance with federal Labor Standards.

[Appointment of Labor Standards Officer \(Pre-Construction Guide, Exhibit 14\)](#) to the Department's Labor Standards Specialist (LSS).

NOTE: *Owner/Developer must designate an LSO before TDHCA will disburse acquisition or construction funds.*

Responsibilities of the LSO include, but are not limited to, the following:

- **Ensure that Project adheres to Federal Labor Standards Provisions** - [Construction Contract Attachment \(HUD Form 4010, Pre-Construction Conference Guide, Exhibit 1\)](#) accompanies all construction contracts executed for the Project (e.g., general contractor, subcontractor and lower tier contractors).
- **Ensure that construction management system appropriately applies** labor standards requirements, including Davis-Bacon prevailing wage rates. The LSO must set up a labor standards enforcement filing system which includes all required support documentation to prove compliance.
- **Prevent contract awards to entities ineligible** to perform federally-assisted work (i.e., debarred, suspended, and/or proposed for debarment). LSO must clear General contractors (prime contractors) and subcontractors, including lower-tier subcontractors on [General Services Administration's Excluded Parties List System \(EPLS\) debarment list](#). Obtain confirmation of federal status on-line at: <https://www.epls.gov/>.
- **Review employer-certified weekly [DOL WH-347 Payroll](#)** (required by the Department) and related documentation, for completeness and accuracy, submitted by Contractor(s) to ensure proper listing of:
 - workers;
 - days worked;
 - approved DOL General Wage Determination work classifications; and
 - wage rates, including overtime is paid at 1.5 times the basic rate, if applicable
- **Ensure completeness of Statement of Compliance attached to payrolls (including signatures)**, that employees receive *weekly* pay, at no less than wage rate applicable to the work classification compliant with the DOL prevailing hourly wage mandate. In case of underpayment of wages, the LSO must ensure that employer promptly pays the worker any required restitution. LSO must document and pursue resolution for repeat violations in accordance with federal labor laws.
- **Conduct on-site inspections**, including interviews with laborers and mechanics employed on the construction project. The LSO must use a certified payroll review tool ([Pre-Construction Guide, Exhibit 9](#)) to document review of payrolls and related submissions, and compare the interview information to the certified payrolls to ensure consistency of prevailing wages paid to workers and adherence to labor standards requirements. The LSO ensures that employer prominently displays the Department of Labor (DOL) "Employee Rights under the Davis-Act" poster at the job site.

Step 2. Preconstruction Conference

Prior to the start of project construction, the Department's Labor Standards Specialist (LSS) and the Owner/Developer's LSO must conduct a Preconstruction Conference with, at a minimum, the Owner/Developer and General Contractor (Prime Contractor).

The LSS will provide the Department's Preconstruction Conference guide to the Owner/Developer when scheduling the conference to document the Preconstruction Conference.

During the Preconstruction Conference, LSS will advise participants of the following: applicable Davis-Bacon and Related labor laws requirements, Department labor standards, Federal award program guidelines, labor standards monitoring, construction details, time frame for completion of Project and payment requirements.

NOTE: Department's Labor Standards Specialist may waive department participation in the preconstruction conference at its discretion.

Step 3. Notice To Proceed (NTP) or Notice to Proceed – Davis-Bacon Exemption (NTP-DBE)

Prior to starting Project construction, the Owner/Developer must obtain from the Department's LSS the Notice To Proceed –Ten Day Call (Exhibit 5) (ten calendar days) or Notice To Proceed – Davis-Bacon Exemption (NTP-DBE). The NTP incorporates the applicable Department of Labor (DOL) General Wage Decision for the Project County location, and will lock-in the required prevailing wages, at a minimum, to *laborers and mechanics* working the project job-site through construction phase. The NTP-DBE authorizes the start of Project construction on projects not subject to labor standards mandate. Before the LSS releases an NTP or NTP-DBE, the Owner/Developer must:

- **Designate a Labor Standards Officer (LSO)** and submit the completed *Appointment of Labor Standards Officer – Form 06.02* to the Department's LSS (not required for NTP-DBE release);
- **Participate in Preconstruction Conference; answer the questions in the guide;** and submit it to the LSS. All conference participants must sign the document if project invokes Davis-Bacon mandates. *LSS may waive Pre-Construction Conference if: 1)Project receives NTP-DBE; 2) Owner/Developer previously participated in Department-sponsored conference and shows working history of compliance; and/or 3) Owner/Developer qualifies as a Government entity with established labor standards procedures acceptable to the Department ;*
- **Confirm with LSS that TDHCA Loan Closing Specialist,** or Department Federal Program Division staff, CLOSED the loan; and
- **Submit a copy of the local jurisdiction building permit** authorizing start or continuation of construction (TCAP only) including support documentation evidencing fee payment, if applicable. **Note:** TCAP Only – TCAP Performance Specialist **must** approve *continuation of construction*.
- **Submit Certificate of Substantial Completion (AIA form G704) and Certificate of Occupancy,** if Project is **100%** complete **prior** to or on date of award (**TCAP only**)

NOTE: DOL General Wage Determination (GWD) Applies to Multi-family or Single-Family Projects as follows:

Residential – Construction, alteration, or repair of single-family or apartment building of no more than four (4) stories in height

Building – Apartment buildings five (5) or more stories high and/or infrastructure work (site work) exceeds more than 20% of Project construction budget

Heavy – Demolition or land leveling (not incidental to construction)

Step 4. Davis-Bacon Compliance and Disbursements

Before TDHCA will disburse federal funds for the following purposes, the Development Owner must comply with these corresponding requirements:

- **Acquisition and loan closing costs** (first draw, or for acquisition-only, the only draw) – submit the completed [Appointment of Labor Standards Officer \(Exhibit 14\)](#) to the LSS;
- **Project construction costs** (first draw) – comply with Notice to Proceed (NTP) or Notice to Proceed Davis-Bacon Exemption (NTP-DBE) procedures listed under **Step 3** (above). Failure to receive a NTP or NTP-DBE from the Department’s LSS **prior to demolition (for reconstruction), rehabilitation and/or the start of Project construction (for new construction)** may render any construction costs incurred ineligible for reimbursement.

NOTE: LSS will not release Notice To Proceed or Notice To Proceed Davis-Bacon Exemption unless TDHCA Loan Closing Specialist or Program Performance Specialist confirms TDHCA loan closure and LSS receives a copy of the Building Permit and/or letter from the City authorizing Project construction from Developer.

NOTE: Federal regulations characterize demolition of a structure as equivalent to construction. A Development Owner must adhere to the Department’s established labor standards procedures prior to the start of any construction activity.

- **Release of Retainage** (final draw) – Upon completion of Project construction (100% complete), prior to submitting the request for release of retainage, submit the [Final Wage Compliance Report \(Exhibit 13\)](#), for review and approval by the LSS. The disbursement team will not approve release of Retainage until LSS confirms receipt and approval of *Final Wage Compliance Report (Form 06.01)*.

NOTE: HUD does not require a Final Wage Compliance Report for Projects that receive Housing Trust Fund (State of Texas) investment as sole source and/or federal source investment in Project does not trigger Davis-Bacon compliance (See “Thresholds” above.)

*NOTE: The Department’s **Compliance and Asset Oversight (CAO) Division** may at any time select for monitoring and review those contracts subject to the Department’s labor standards provisions. CAO will monitor Contracts by desk reviews and on-site visits. CAO selects contracts for monitoring based on risk assessment.*