



CDBG Implementation Manual 2025

Chapter 4 Contents

Chapter 4: Construction and Labor Standards	3
Overview.....	3
4.1 Pre-Bid Submittal Preparation	3
Secure Site Control	3
Obtain Authority to use grant funds from DFA	3
4.2 Prepare Bidding and Contract Documents	3
Applicable State and Federal Laws	4
Wage Rate Decisions.....	4
Obtaining Wage Rate Decisions	4
4.3 Review Plans and Specifications, Bidding and Contract Documents, and Construction Cost Estimate	8
Grantee Completeness Review	8
Agency Reviews	9
Utility Company Notification and Review	9
Construction Cost Estimate Review	9
ADA Compliance Certification	10
Other Bid Documents.....	10
Bid Contract Documents Approval	11
4.4 Solicit and Receive Bids.....	11
4.5 Accept Bids	13
Most Responsive and Responsible Bidder.....	13
Contractor/Subcontractor Clearance	14

Bidding and Bonding - Surety Verification	14
If Bids Exceed the Budget.....	14
4.6 Award Contract	15
4.7 Execute Contract	15
4.8 Complete Contract/Subcontract Report (Exhibit 1-E)	16
4.9 Conduct the Pre-Construction Conference	16
Equal Opportunity and Labor Standards Compliance	18
Pre-Construction Conference Minutes	20
4.10 Issue the Notice to Proceed	20
4.11 Monitor Construction	20
Construction Review	20
Pay Applications	21
Prompt Payment Act.....	21
Change Orders.....	21
4.12 Monitor Labor Standards Compliance	22
Labor Standards Officer	22
Labor Standards Compliance	22
On-Site Interview	22
Payroll Review.....	24
Restitution.....	25
Overtime Violations.....	26
Equal Opportunity Compliance	28
4.13 Accept and Close-Out the Project; Make Final Payments	28
Acceptance	28
Final Payment	28
Project Closeout	28
4.14 Maintain Files	29

Chapter 4: Construction and Labor Standards

Overview

This chapter covers bidding, contracting, construction and labor standards of public improvement projects administered through the CDBG program. Although Grantees should have hired an architect or engineer to represent them during this phase, there are numerous administrative tasks Grantees must undertake which are not typically included as part of most architect or engineering standard basic services. As the grant recipient, the ultimate responsibility for compliance with all state and federal laws and regulations remains with the Grantee.

Grant funds awarded under this program are made available through a HUD Community Development Block Grant administered by the State of New Mexico, Department of Finance and Administration, Infrastructure Planning and Development Division. This chapter provides the Grantee with a thorough understanding of the requirements for construction contracts and full compliance with labor standards procedures.

4.1 Pre-Bid Submittal Preparation

Secure Site Control

As part of the CDBG application process, prospective applicants are required to ensure that no land rights or use impediments are in place prior to pursuing the project as certified by the Chief Elected Official. In addition to the site certificate mentioned above, all other pertinent easements, rights of way, or specific use permits must be in place.

Obtain Authority to use grant funds from DFA

DFA understands that the engineer is working on preparing the bidding documents (bid docs) for DFA to review and approve in order to expedite the bidding process, however, it is more crucial that the environmental review has been completed. Once the bidding process starts, contractors are understandably ready to start construction. Additionally, Grantees are required to give an awarded contractor a notice to proceed within a relatively short time frame. For these reasons, the bid docs will not be reviewed and approved until the Environmental Review has been completed and DFA has issued the “Authority to Use Grant Funds” (**Exhibit 2-Q**).

Under no circumstances will bid docs be approved by DFA if the Grantee does not have site control and has not received authorization to use grant funds.

4.2 Prepare Bidding and Contract Documents

While a Grantee’s focus during the design phase is most frequently directed toward reviewing the design of the project to ensure that program requirements are met, the Grantee must also ensure that the bid and contract documents prepared by the Design Professional include all necessary documentation including required Federal and State laws that govern wages and working

conditions for laborers and mechanics employed under construction contracts funded by New Mexico State CDBG funds. Grantees must receive approval from applicable agencies prior to submitting these documents to DFA for approval.

Applicable State and Federal Laws

Exhibit 4-A is the “Construction Bidding Document” that must be used for New Mexico CDBG Public Works Projects. The bidding and contract documents incorporate all of the rules and regulations governing the CDBG program. The purpose of labor standards legislation is to ensure fair and equitable treatment of laborers and mechanics by employers on federally assisted construction projects. Labor standards do not apply to work performed by managers or clerical personnel, only laborers and mechanics. Working supervisors are covered if they spend more than 20% of their time doing the work of a laborer or mechanic.

More information regarding the above federal laws may be found at the US Department of Labor website at <https://www.dol.gov/whd/govcontracts/dbra.htm>.

The Grantee must review the contract documents prior to bidding to ensure that documents contain the following labor standards requirements:

Wage Rate Decisions

Davis-Bacon Act requires that each worker receive the prevailing wage for any given job classification in their locality. For example, an employee is working on a CDBG project as a “cement mason”. Cement mason would be his/her job classification. Both federal and state wages are issued for each work classification. The prevailing wage is simply the higher of the two wages.

Both state and federal wage rates will be included in the bid docs, so that prospective bidders will know exactly what they need to pay each employee for all job classifications throughout the life of the project. This allows prospective bidders to accurately anticipate labor costs and subsequently, submit more precise bids. **It is the Grantee’s responsibility to ensure that the appropriate decision(s) are included in the contract documents.**

Obtaining Wage Rate Decisions

To obtain a wage rate decision, the Grantee must use the approved project scope (**Exhibit 1-A**) from the grant agreement. This project description is used to determine the appropriate worker classifications and rates. The CDBG contract project number and the county where the work will take place must be included.

A. *State Wage Rate Decision*

The Grantee must request these rates on-line from the New Mexico Department of Workforce Solutions (NMDWS) approximately 21 days before the start of bid advertising. State wage decisions are valid for 120 days, meaning that if the bids are not advertised and collected within that timeframe, wages will have to be requested again. Additionally, excessive time between the

collection of bids and the award of the contract may require a subsequent wage request. For competitively bid projects, a wage decision is locked-in at bid opening.

B. Federal Wage Rate Decision

The federal wage rate must be requested twice. The requests will be completed on the “Request for Federal Wage Rate Determination/10-Day Call” (**Exhibit 4-C**) and submitted to DFA for processing. The only differences between the “initial” request and the “10-day call” is the box checked at the top of the form (**Exhibit 4-C**) and the timing of the requests. The initial request should be submitted between 3-5 weeks prior to the anticipated bid opening date. It is not acceptable to obtain directly from the Federal web site.

Once the form has been completed, it can be submitted by emailing to DFA/IPDD Office Manager, Mariah Baca at Mariah.Baca@dfa.nm.gov and with a cc: to the DFA project manager.

Additionally, within ten (10) days prior to the bid opening date, the Grantee must submit a request for the 10 Day Call (**Exhibit 4-C**). The purpose of this additional request is to determine if there have been any modifications or a rescission of the federal wage rate decision prior to the collection of bids. This “10 Day Call” is important because in recent months, multiple modifications have been made to the federal wage decisions.

If changes occur, the updated wages must be included in the bid docs for prospective bidders. Once the changes are obtained, the Grantee must ensure that they are distributed by addendum to all contractors who received the original bidding documents. **Note: all addendums need to be reviewed and approved by DFA.**

The federal and state wage rate decisions must be included in the bidding and contract documents. They cannot be incorporated by reference. Additionally, if a wage rate changes and the Grantee either fails to request them 10 days prior to the bid or does not include the wage change in the bid docs, the Grantee will be liable for the difference and receive a finding upon closeout of the project.

For competitively bid projects, a federal wage decision is locked in at the bid opening. In addition, the contract must be awarded within 90 days of bid opening. If the contract is awarded on the 91st day or later after the bid opening date, the Grantee is required to update the wage decision. If the wage decision has been modified, the new wage decision must be incorporated into the contract document. Failure to follow any of these requirements may result in DFA enforcement of a re-bid of the project, or the Grantee returning funds.

The importance of obtaining accurate wage rate information and following it should be discussed at the Pre-Bid Conference for potential contractors and again at the Pre-Construction Conference for the selected contractor(s).

Important: Upon receipt of the federal and state wage rate decisions, the Grantee and/or Design Professional should review them, to determine:

- (a) if any additional classifications are required, and
- (b) verify the expiration dates.

In the event that a job classification(s) and corresponding base rate(s) and fringe benefit(s) are missing from the 10-day call federal wage rate determination, a procedure called wage conformance must be performed. The Grantee should immediately contact the DFA project manager if conformance is required.

DFA will request that the Grantee complete and submit “Standard Form 1444” request for Authorization of Additional Classification and Rate. Once received, DFA will sign, date and submit to the US Department of Labor (DOL). DOL response time can take up to 10 days, so if a wage conformance issue arises it is best to take action as quickly as possible.

1. **Copeland “Anti-Kickback” Act** requires that workers be paid at least once a week without any deductions or rebates, except permissible deductions. Permissible deductions include tax withholding, FICA, deductions the worker authorizes in writing, and those required by court processes.

The act also requires contractors to maintain payroll records, submit weekly payrolls with supporting documentation for all deductions and/or fringe benefits, and provide the original weekly Statement of Compliance to the contracting agency. It applies to all contracts covered by the Davis-Bacon Act. The contractor must review, certify and deliver or mail their payroll weekly within seven days after the regular payment date of the payroll period to the Labor Standards Officer (LSO). The LSO must review and certify the contractors certified pay roll and deliver monthly to DFA.

2. **Contract Work Hours and Safety Standards Act** requires that workers receive “overtime” compensation at the rate of one and one-half times their regular hourly wage after they have worked 40 hours in one week. This applies to all construction contracts issued under the CDBG program.

3. **Fair Labor Standards Act (FLSA)** provides for minimum wages, record keeping, overtime pay (forty hour work week), and child labor standards.

4. **Employment of Apprentices/Trainees clause** means that apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed 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 HUD.

5. **Equal Opportunity Requirements**

Grantees must ensure that the contract documents comply with Equal Employment Opportunity (EEO) requirements. The EEO provisions and contractor certifications required for inclusion in the contract documents are presented in the Contract Document Guide (**Exhibit 4-A**) and include:

- (a) Contractor’s Certification regarding Equal Employment Opportunity
- (b) Contractor’s Certification regarding Section 3 and Segregated Facilities

- (c) Subcontractor’s Certification regarding Equal Employment Opportunity
- (d) Subcontractor’s Certification regarding Section 3 and Segregated Facilities
- (e) Executive Order 11246 Clause
- (f) Age Discrimination Act of 1975 Compliance
- (g) Rehabilitation Act of 1973 Compliance
- (h) Notice of Requirement for Affirmative Action to Ensure Equal Opportunity
- (i) Standard CDBG-assisted Equal Opportunity Construction Contract Specifications
- (j) Segregated Facilities Clause
- (k) Title VI of the Civil Rights Act of 1964
- (l) Section 109 of the Housing and Community Development Act of 1974
- (m) Written Section 3 Plan and Section 3 Compliance Certification 4-Y-1 and Section 3 Business Concern Certification 4-W

The supplemental General Conditions of the “Construction Bidding Document Template” (**Exhibit 4-A**) includes minority and female goals. Minority goals are listed by county. These goals and contract conditions make written affirmative action plans unnecessary unless the U.S. Department of Labor determines that a specific contractor or group of contractors needs to establish higher goals in order to remedy the effects of past discriminatory behavior.

These goals apply to each construction craft and trade in the contractor’s entire workforce working in an area covered by the goals and timetables, not just those jobs that are CDBG-assisted.

6. **Bond Requirements**

Bonding requirements are essentially insurance policies designed to protect the project (and the funds associated with it) against negligent and/or delinquent contractors. As part of these projects, contractors are required to obtain these bonds through a third party to protect against failure to meet bidding requirements, pay their employees and/or complete the project on time and to the Grantee’s satisfaction.

Section 13-1-146, NMSA 1978, requires bid security (“bid bond”) for construction contracts procured by competitive sealed bid when the price is estimated by the procurement officer to exceed \$25,000. The bidding documents must require bid security in an amount equal to at least 5% of the amount bid in the form of a bond provided by a surety company authorized to do business in the state, or the equivalent in cash or other form satisfactory to the state.

Section 13-4-18, NMSA 1978 requires performance and labor and material payment bonds when a construction contract is awarded in excess of \$25,000. The bonds shall be delivered to the Grantee and shall become binding on the parties upon the execution of the contract.

If a contractor fails to deliver the required performance and payment bonds, the bid shall be rejected, and the bid security enforced to the extent of actual damages. “Construction Bidding Document Template” (**Exhibit 4-A**) includes a rider to be added to standard bond forms. See Bidding and Bonding - Surety Verification under Section 4.5 for more information.

7. **Federal System for Award Management (SAM) Clearance and Eligibility to Work on Federal Projects**

For CDBG the Grantee, the prime construction Contractor, and all subcontractors must maintain an active registration on SAM throughout the project. The registration, must be available for public search at all times. Registration on SAM (<https://www.sam.gov/SAM/>) is free, but must be renewed regularly. Failure to renew promptly could cause lapses in active registration. To verify this, DFA must review and approve the **Exhibit 1-X**, as explained in chapters 1 and 3. The **Exhibit 1-X** should be filled out with all information on all vendors on the project and submitted to DFA annually, whenever there are changes, and before any approval of agreements or contracts. Any lapses in SAM registration (where required) or involvement of an excluded vendor will result in concerns, findings, delays in reimbursement, and possibly the need to return funds received to the U.S. Treasury. It is the responsibility of the Grantee to ensure that these requirements are met.

8. **Record Keeping**

A Labor Standards Compliance file must be established and maintained for each CDBG public improvements project. It should include contractor compliance as well as monitoring documentation. Labor standards and closeout procedures will be discussed at length in Sections 4.12-4.13 of this chapter.

4.3 Review Plans and Specifications, Bidding and Contract Documents, and Construction Cost Estimate

Grantee Completeness Review

Grantees must review the plans and specifications to ensure that they provide a clear and accurate description of the technical requirements for the materials and products and/or services to be provided.

The plans and specifications must have the seal of an appropriately licensed Design Professional registered in New Mexico. The Grantee should ensure that the bid package contains all the relevant information that the bidders will need to respond adequately. The required documents are listed in the “Bidding and Contract Documents Index” (see **Exhibit 4-A**).

The completed copy of the bid package is sent to the Project Manager. A complete set includes the exact bid package that the bidders will receive. Include the following with this complete set of bid documents for DFA to review:

Agency Reviews

If the project falls under the jurisdiction of another state agency, the drawings and specifications must be reviewed by that agency prior to bidding. For example, all sewer and water projects must be reviewed by New Mexico Environment Department (NMED). With the required appropriate agency review, the Grantee's files must include documentation of the review and approval. The Grantee must include the "Project Description" **Exhibit 1-A** of the Grant Agreement so that the reviewing Agency clearly understands the specific scope of work for the CDBG project. A copy of the agency approval letter must be sent to the DFA Project Manager prior to review of bid docs by DFA.

The Agencies that review plans, specs and bid docs are as follows: Environment Department (NMED) (including Construction Programs Bureau, Drinking Water Bureau, and Ground Water Bureau), Department of Transportation (NMDOT), Construction Industries Division (CID), Regulation and Licensing Department (RLD), Department of Health (NMDOH), Children Youth and Families (CYFD) and Governor's Commission on Disability (GCD) if project is subject to the American with Disabilities Act.

The following are examples of infrastructure projects and what agencies may need to review and approve bid docs:

Street & Drainage: NMDOT and GCD (if applicable) Water/Wastewater: NMED, CPB, and DWB (if applicable)

Public Facility: CID, RLD, NMDOH, GCD, CYFD (if applicable)

Utility Company Notification and Review

The Grantee must notify and coordinate with all utility companies, including gas, water, electric, telephone, cable TV, and drainage authorities (if any) that may have facilities within the project area. The notice must describe the project to be undertaken and its location, preferably by providing copies of the project plans, and inform the companies that they must provide a plat or diagram showing the location of any utility installations in the project right-of-way within 30 days. The notice should also state that failure to provide a plat or diagram within 30 days, or providing the Grantee with inaccurate information, will release the Grantee, Design Professional, and contractor from any liability resulting from utility damage, unless such damage is caused by negligence. A copy of any plans or diagrams received from utility companies must be made available to bidders for review.

Signature blocks should be provided on the cover sheet of the drawings, and each affected utility company should sign off on the final set of drawings that are submitted to DFA.

Construction Cost Estimate Review

If, based on the Design Professional's construction cost estimate, the Grantee anticipates that bids will exceed, or be close to the budgeted construction funds, additive or deductive alternatives should be provided as a part of the bid documents. When alternates are provided, the bidding

documents must clearly describe the alternates and specify the order in which the alternates will be applied in determining the low bid. Drawings must also clearly show the scope of the alternates.

As an example, using deductive alternates, a project may include street construction, sidewalks, landscaping, street lighting, and replacement of sanitary sewer lines. The description of bid items indicates which items are to be bid as alternates and the order of priority in which items are to be deducted.

In this example, if landscaping and sidewalks are to be bid as deductive alternates and the order of priority for deducting is landscaping first and sidewalks second, and if all bids received exceed the budgeted amount, each bid must be re-evaluated (not just the lowest one) and the amount bid for landscaping subtracted from the total amount bid. Then the adjusted bids must be checked to see if any bids are “at” or “below” the budgeted amount. If they are, the Grantee may award the bid to the bidder with the lowest adjusted bid. If not, the process is repeated, this time deducting the amount bid for sidewalks from the adjusted bid of each bidder. Depending on the number of deductive alternates specified, the process can be repeated until one of the adjusted bids come in “at” or “below” the budgeted amount.

The desirability of using this method when the construction cost estimate is very close to the budgeted funds cannot be overstated. Failure to provide deductive alternates will require changing the bid documents and a repetition of the entire bid process, resulting in unnecessary and costly delays in the project.

ADA Compliance Certification

Once the preliminary drawings are complete, the Design Professional must have an ADA review performed by the Governor’s Commission on Disability, if applicable. When final drawings and contract documents are complete, the Design Professional must execute a certification that applicable standards of handicapped accessibility have been or will be satisfied, or specify the basis for exemption. This certification verifies that buildings and facilities are accessible to and usable by the physically handicapped. The certification must be co-signed by a Grantee official, filed in the contract file, and a copy sent to DFA. Refer to “Architects & Engineers Certification of Compliance” (**Exhibit 4-D**).

Other Bid Documents

Bid documents must include all CDBG-related special provisions. In addition to the labor standards and equal opportunity provisions previously discussed, the following special provisions must be included, as applicable:

1. Bonding and Insurance Requirements Clause
2. Conflict of Interest
3. Access to Records and Maintenance of Records
4. Clean Air/Water
5. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead Based Paint Prohibition)

6. Flood Insurance, if applicable

The bid documents must also include cost and pricing formats. Bid documents must not include costs for contingencies. Generally, civil engineering work such as streets, water, sewer, and utilities, as well as landscape projects, are unit price contracts. Construction or improvements to buildings utilizes a lump sum contract.

A clear description of bid items should be provided. For unit cost contracts, the bid form should delineate each item, estimated quantity, unit price, and total cost. Unit prices should be provided in numbers and words, in the event that an entry is illegible.

Bid Contract Documents Approval

First, the contract documents should be reviewed in their entirety by the Grantee's attorney to ensure compliance with applicable state and local laws. The required documents are listed in the "Bidding and Contract Documents Index" (see **Exhibit 4-A**).

Once the bidding and contract documents have been fully reviewed for completeness and the plans and specifications reviewed, approved, and signed off by the Grantee, utility companies, all applicable state agencies, and DFA, bids may be solicited through a public advertising process. DFA will have the final review and approval prior to advertising the Invitation for Bid (IFB) for the construction of the project.

After the Grantee has ensured that the bid package contains all the relevant information, then they can submit the bid package to their Project Manager. The Project Manager will do a thorough review of the bid package to verify the scope, budget and schedule are tied to the executed grant agreement and that all the state and federal laws are included. Once DFA has reviewed and approved the bid package, the Project Manager will issue written documentation providing the Grantee specific documentation and Exhibits needed prior to the award of the contract (see Section 4.6) and what documents are needed prior to the pre-construction conference (see Section 4.9).

Grantee will be responsible for all costs incurred or committed if bids are solicited without approval of bid documents by DFA.

4.4 Solicit and Receive Bids

State law requires that bids be advertised once, not less than ten days prior to bid opening. Ten days is typically insufficient time for contractors to prepare a response to the Invitation for Bid (IFB). It is recommended that the Grantee allow 21 to 30 days to allow prospective bidders adequate time to formulate more precise bids and ideally increase the pool of bidders. It is also recommended that the advertisement be placed in the legal section. The IFB must call the bidder's attention to the requirement for prevailing wages, as well as Section 3, Equal Opportunity, and other related federal requirements not traditionally associated with locally or state funded projects.

At least ten days before the scheduled bid opening, the Grantee and/or the Design Professional will conduct a mandatory Pre-Bid Conference at a location of the Grantee's choice. Information

regarding the Pre-Bid Conference should be provided in the Invitation for Bid. The purpose of this conference is to provide an opportunity for contractors to tour the job site and to ask questions. The following items should be discussed during the Pre-Bid Conference:

1. Architect/Engineer of record should discuss technicalities of the project.
2. Proposed timeline.
3. Labor Enforcement Fund registration must be current with NMDWS at time of bid, and contractors must not be disbarred.
4. Registration with the federal System for Award Management (SAM) must be active at time of bid and maintained through the life of the project. (See Section 4.5) Contractor / Subcontractor Clearance and Labor Enforcement Fund.
5. Bonding and Surety requirements.
6. Labor Standards requirements, including prevailing wages, certified payroll, Section 3, EEO, etc.

If necessary, questions and answers should be documented in an addendum to all bidders of record. Questions will be sent to the Architect/Engineers associated with the project. The Grantee working with the Architect/Engineer is legally obligated to respond to all questions submitted in writing. Oral interpretations or clarifications will be without legal effect. Additionally, questions received less than seven calendar days before the bid opening need not be answered.

Addenda will be delivered by the Architect/Engineer to all known prospective bidders and be made available for inspections wherever bid docs are on file. Addenda will be issued no later than four days (96 hours) prior to the bid collection date, except an addendum withdrawing the request for bids or which includes postponement of the date for receipt of bids. All addenda must be reviewed and approved by DFA prior to issuance.

The bids received must be logged in with the time and date of receipt, name of bidder, and procurement identification. Bids received must remain sealed in a secure place until the bid opening.

At the date and time specified, a public bid opening should be conducted in a businesslike manner. Bids should be read aloud. Bids must be reviewed for both technical and legal responsiveness. In addition, the bidders must be evaluated as having the capacity to furnish the products and/or services required. Minutes of the bid opening along with a tabulation of bids should be placed in the Contract File. Refer to “Minutes of Bid Opening” (**Exhibit 4-E**).

DFA identifies what documents the Grantee needs to provide their Project Manager once the bidding and selection of their contractor takes place. The purpose of obtaining these documents at this point in the project is to verify the procurement of the contractor/subcontractor(s), ensuring that the contractors/subcontractor(s) are eligible to work on the project and to verify that the engineer believes the potential bid winner to be responsive, responsible and capable of completing the project successfully.

The Grantee then sends the following documents to their Project Manager with a transmittal letter requesting approval of the award of the contract. (See Section 4.5).

- Approval of Plans/specs & Bid Documents by authoritative agencies.
- Approval by DFA of Plans/specs & Bid Documents.
- Affidavit of publication and/or tear sheet of the invitation/notice for bids.
- Solicitation list and copy of the transmittal letters of those contractors who may be solicited for bids, if applicable.
- NMDWS Wage Rate Decision #.
- Initial request Federal Wage Rates (**Exhibit 4-C**); Decision #.
- Copy of the Pre-Bid meeting minutes and sign in sheet.
- 10 (ten) day call Federal Wage Rates (**Exhibit 4-C**); Decision #.
- Copy of the Bid Opening meeting minutes and sign in sheet (**Exhibit 4-E**).
- Certified copy of the bid tabulation sheet(s).
- Verification the budget for Construction meets the construction contract.
- Certification of contractor/subcontractor(s) eligibility (**Exhibit 1-X**).
- Copy of the letter of recommendation from the engineer of record.

Grantee will be responsible for all costs incurred or committed to the project if approval by DFA of contract documents was not received prior to the award of the contract. Once DFA has reviewed the procurement of the contractor, DFA will issue another letter for the Grantee to move forward with the award of the contract and request important documentation for review and approval prior to the pre-construction conference.

4.5 Accept Bids

After the bid opening and acceptance of bids, the Grantee must award a contract with reasonable promptness. Many activities through multiple entities must occur in order to award the contract, so effective communication and cooperation are paramount to the award.

Most Responsive and Responsible Bidder

The Grantee must award a contract to the lowest, responsive, and responsible bidder if the bid is within the budgeted amount. If the contract is awarded to other than the low bidder, the Grantee must prepare a written statement explaining why each lower bidder was deemed non-responsive or not responsible.

To be responsive, the bidder must have submitted all required documentation for compliance with CDBG regulations (EEO, labor standards, etc.) and complied with Section 3 requirements.

Responsiveness criteria must be uniformly applied to all bidders.

The bidder may also be determined not responsible. If a bidder is deemed to be unable to fulfill their bid based on cost or previous working experience (as determined by the judgement of the

Grantee, Grantee's attorney or Design Professional), the bid may be legally rejected. This may occur with unreasonably low bids, inexperienced contractors and/or contractors with poor historical performance. In such a case, a written statement will be required.

Contractor/Subcontractor Clearance

Registration on SAM (<https://www.sam.gov/SAM/>) is free and required for all contractors and subcontractors prior to contract award for CDBG projects. Please see details above and in chapter 1 and on the "Contractor/Subcontractor Clearance Form" (**Exhibit 1-X**).

Bidding and Bonding - Surety Verification

NMSA 13-1-146 is a requirement for bid security that must be included by the Contractor in the bid documents. This statute states that "Bid security shall be required of bidders for construction contracts procured by competitive sealed bid when the price exceeds twenty-five thousand dollars (\$25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond or the equivalent in cash."

NMSA 13-4-18 refers to the construction contract performance and payment bonds and is obtained from the contractor once the bid has been awarded. This statute states that "When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered, performance and payment bonds, in an amount equal to one hundred percent of the price specified in the contract".

The Grantee must verify with the Office of the Superintendent of Insurance 1-855-427-5674 that the Contractor's bidding and bonding agency (The Surety Company) listed on the Bid Bond is licensed/authorized to do business in the state of New Mexico. A copy of the surety verification must be placed in the project file.

If Bids Exceed the Budget

If the lowest bid, including alternates, exceeds the amount budgeted for construction, the Grantee may negotiate with the low bidder to bring the contract within the available funds, if the bid amount does not exceed 100% of available funds of construction or reduce the scope of work as defined by **Exhibit 1-A** of the CDBG grant agreement.

If the lowest bid does exceed the amount budgeted for construction, additional funds may be secured by the Grantee from non-CDBG sources to make up the difference between the amount budgeted for construction and the lowest bid. In this case, Grantees should contact their DFA Project Manager to initiate a grant agreement amendment prior to entering into a construction contract.

If no additional funds are available, the Grantee may reject all bids and start the process over; or request a reallocation of CDBG funds from other line items. To pursue the reallocation of CDBG funds, Grantees must contact their DFA Project Manager to initiate a grant agreement amendment prior to entering into a construction contract.

4.6 Award Contract

Once a responsive low bidder has been determined, DFA has reviewed the procurement of the contractor, and funds are determined to be sufficient for construction, DFA will issue a letter clearing the Grantee to move forward and Award the Contract. The letter will identify what the Grantee will need to provide DFA prior to the pre-construction conference.

The notice of award usually is sent to the low bidder a form provided by the Design Professional on Grantee letterhead. Notification must also be sent in writing to all unsuccessful bidders. In addition, the Grantee must send a “Notice of Contract Award” (**Exhibit 4-G**) to DFA within 10 days of the award and prior to pre-construction conference. DFA requires the Grantee to email the following documents along with a transmittal letter to their Project Manager prior to the pre-construction meeting:

- Copy of the minutes of the Council meeting when the award is made. The award must be completed within 30 days or as specified in the bid documents or the bid must be rejected.
- Copy of “Notice of Contract Award” (**Exhibit 4-G**) within 10 days of the award sent to DFA and New Mexico Department of Workforce Solutions.
- Copy of the notice of award sent to the lowest bidder.
- Copies of the written notification to all other unsuccessful bidders.

The contract must be awarded within 90 days of bid opening. If the contract is awarded on the 91st day or later after the bid-opening date, the grantee is required to update both the state and federal wage decisions. If the wage decision has been modified, the new wage decision must be incorporated into the contract document.

4.7 Execute Contract

Following award of the contract, the bonds and insurance certificate must be completed and the contract executed. Contract documents should include all the items contained in the bidding documents, as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

The Grantee’s attorney should review the complete set of contract documents for sufficiency prior to executing the contract.

Once a contract is fully executed, the Grantee should return the bonds of the unsuccessful bidders.

DFA MUST CONCUR on all contracts, addendums, change orders and amendments throughout the span of the project prior to commencement of the work under any such contract, addendum, change order or amendment.

4.8 Complete Contract/Subcontract Report (Exhibit 1-E)

Grantees must initiate or update the Contract/Subcontract Report (**Exhibit 1-E**) within 30 days of the contract execution date. The Contract/Subcontract Report must be completed to capture data for HUD reporting and tracks CDBG funded contracts for professional services, contractors and sub-contractors. The purpose of this requirement is so that DFA can report to HUD about the percentage of CDBG dollars that benefit contractors and subcontractors that are Section 3, minority-owned businesses, women-owned businesses as well as whether any wage violations occurred during the project.

The report lists the Contractor and Subcontractor(s) complete contact information, contractor name, complete address, contact name (first and last), phone number, Federal Tax ID #, System of Award Management (sam.gov) Expiration Date, Type of Contract, Trade Codes, and details of the business including Race/Ethnicity, Women Ownership, and Section 3 status. Also included is the Date of Contract Execution, Davis Bacon information and both State and Federal wage decision numbers, and finally, the amount of the contract to be paid with CDBG funds.

4.9 Conduct the Pre-Construction Conference

If all the steps above are followed, a Pre-Construction Conference can be held immediately following or concurrent with the execution of the contract. DFA concurs with all copies of the executed contract and requires one for the file.

The pre-construction conference is to set up administrative procedures and schedules, and establish procedures for shop drawings and other submittals. Those present should include the Grantee; the Contractor and the foreman or construction superintendent and payroll clerk or the person on staff who prepares payroll; identified subcontractors; the Design Professional; and utility company representative(s) as well as DFA. It is important that all parties be present (or join by phone if necessary), as it will be a rare occasion when all those involved in the project at the same place at the same time. This opportunity will be utilized to answer any questions and ultimately come to a mutual understanding of what exactly the project will entail. The Grantee will provide written advance notice to all invitees, including DFA and all other funding agencies involved with the project.

Outlined below is a checklist of items (excluding equal opportunity and labor standards compliance). The “Preconstruction Conference Minutes with Required Elements” (**Exhibit 4-L**) should be incorporated into the Architect/Engineers agenda and/or meeting minutes:

1. Purpose of conference
2. Introduction of:
 - (a) Grantee representative
 - (b) Grantee compliance officer
 - (c) Design Professional’s representative
 - (d) Project Engineer or Architect

- (e) Resident Project Representative
 - (f) Contractor
 - (g) Utility company representative
3. Attendance roster
 4. Utility company coordination
 5. Review of contract documents for completeness, including:
 - (a) Contract
 - (b) Performance bond
 - (c) Payment bond
 - (d) Insurance certificate
 6. Scope of work for award
 7. Contractor progress schedule
 8. Subcontractor listing [Table A in “Construction Bidding Document Template” (**Exhibit 4-A**)]
 9. Subcontractors, and suppliers
 10. Schedule of values submittal for partial payments on lump sum items
 11. Shop drawings and job mix formulas submittal and review procedures
 12. Stored materials
 13. Submittal of contractor personnel authorized to execute payment applications, change orders, substantial completion and final pay applications, “Payroll Review Worksheet” (**Exhibit 4-U**)
 14. Traffic handling (detour) plan
 15. Job safety
 16. Project communication
 17. Survey and layout responsibilities
 18. Testing responsibilities
 19. Construction water
 20. Job sign location
 21. Permits
 22. Procedures for payment applications
 23. Procedures for change orders and determination of amount (Grantees should advise the Contractor that any change to the contract documents can only occur by means of an approved change order and DFA concurrence)
 24. Special grantee or funding agency requirements
 - (a) “Contractor/Subcontractor Clearance” (**Exhibit 1-X**)
 - (b) “State/Federal Wage Rates” (**Exhibit 4-C**)

- (c) "Contract/Subcontract Report" (**Exhibit 1-E**)
- (d) "Notice to All Employees" (**Exhibit 4-H**)
- (e) "Record of Employee Interview" (**Exhibit 4-O**)
- (f) Section 3 forms requirements (see Chapter 5)
 - i. Section 3 Compliance Certification Form (**Exhibit 4-Y-1**)
 - ii. Section 3 Compliance Officer (**Exhibit 4-N-1**)
 - iii. Section 3 Business Concern Certification (**Exhibit 4-W**)
 - iv. Section 3 Worker Certification Forms (**Exhibit 4-X**) – English and Spanish
 - v. Section 3 Utilization Tracker – Business Labor Hours (**Exhibit 4-V-1**)
 - vi. Section 3 Utilization Tracker – Labor Hours (**Exhibit 4-V-2**)
- 25. Affirmative action plan
- 26. Labor Standards and Equal Opportunity
- 27. Extra sets of contract documents needed by contractor
- 28. Expected date of notice to proceed
- 29. Groundbreaking or dedication ceremonies
- 30. Contractor questions
 - (a) Administrative
 - (b) Technical
- 31. Resident Project Representative comments

Equal Opportunity and Labor Standards Compliance

The Grantee must advise the contractor of all equal opportunity and labor standards responsibilities, as well as the Grantee's role in monitoring compliance. The Grantee must ensure that the following posters are displayed at the construction site by the Contractor:

- Employee Rights (**Exhibit 4-H**) English and Spanish;
- Worker Rights Davis-Bacon (**Exhibit 4-H-1**) English and Spanish;
- Job Safety and Health (**Exhibit 4-I**) English and Spanish;
- EEO Know Your Rights (**Exhibit 4-J**) English and Spanish;
- A copy of the state wage decision
- A copy of the federal wage decision

Additional labor standards and equal opportunity items that must be explained or discussed during the Pre-Construction Conference include:

1. **The contractor must submit weekly payrolls** with a weekly "Certified Payroll" (**Exhibit 4-P**) signed by an officer of the company to the state and Grantee. The Contractor is responsible for securing payrolls from all subcontractors. Payrolls must also be reviewed by the "Labor Standards Compliance Officer" as designated by

“Appointment of Labor Standards Officer” (**Exhibit 4-N**). This person will also be required to submit weekly “Payroll Review Worksheets” (**Exhibit 4-U**) to ensure accuracy of the prevailing wage and identify any potential restitution issues prior to submitting the with the payrolls.

2. Wages paid must conform to those specified in the wage rate decision included in the contract documents. A copy of the wage rate decision and the wage rate poster must be posted at the job site. Employers must ensure that all wage classifications have been included in both the federal and state wage decisions. If additional wage classifications are required, they should be requested during this meeting or as soon as the absence of a wage class is noted.
3. Apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the NM Department of Labor Public Works Apprenticeship and Training program. If apprentices or trainees will be used, the contractor must provide Grantee with a copy of the state certification program.
4. Workers must be paid overtime if they work more than 40 hours in one week. Failure to pay workers at least time and a half each hour they work in excess of 40 hours in one week violates the Contract Work Hours and Safety Standards Act (CWHSSA) and, in addition to restitution, makes the contractor liable for liquidated damages of \$33.00 a day for each time each worker worked more than 40 hours a week without being paid time and a half in addition to making restitution to any affected employee(s).
5. Payroll deductions cannot be made that are not specifically provided for in the wage rate decision or Section 3.5 of the Copeland Anti-Kickback provisions. Any deductions, other than these, are permissible only with the express consent of the U.S. Secretary of Labor. An unidentified payroll deduction is a method used by unethical contractors to get their workers to “kick-back” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentration. Unspecified payroll deductions should be treated as a serious discrepancy and should be resolved prior to contractor payments.
6. Describe the compliance review that the Grantee will undertake and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making payment to the contractor. Labor standards provisions are as legally binding as the technical specifications. Failure to pay specified wages should result in contractor payments being withheld in the amount necessary to ensure payment of back wages and/or liquidated damages until discrepancies are resolved.
7. Correct any equal opportunity deficiencies such as outstanding Section 3 plans, certificates of compliance, etc. Explain the contractor and subcontractor responsibilities regarding equal opportunity. Explain the requirements for monthly submission of employment utilization reports, as well as equal opportunity monitoring procedures during site visits.

Pre-Construction Conference Minutes

At the conclusion of the Pre-Construction Conference, Grantees must prepare minutes of the meeting. “Sample Pre-Construction Conference Minutes” (**Exhibit 4-L**) address equal opportunity and labor standards. The minutes should also summarize the disposition of the items covered at the beginning of this section.

The minutes should be distributed to all attendees, with a request for comments by a specific date. Copies should be sent to the DFA Project Manager and placed in the Grantee’s project file.

4.10 Issue the Notice to Proceed

At this point in the progress of the project, the Pre-Construction project documentation should be complete. The Grantee should ensure that all required documentation is present, including equal opportunity and labor standards forms, and construction contract.

The Grantee sends a “Notice to Proceed” (**Exhibit 4-M**) to the Contractor, with a copy to the DFA Project Manager and to the Grantee’s project file. The notice should state the construction start date, scheduled completion date, wage decision number, and person responsible for equal opportunity and labor standards compliance. Submit to DFA the fully executed construction contract for concurrence.

4.11 Monitor Construction

Grantees must monitor the construction work to ensure compliance with technical specifications and state and federal requirements. Grantees must also maintain adequate cost and budget controls, and process the necessary contract change orders to bring the project to satisfactory completion.

Construction Review

During construction, the Grantee is responsible for monitoring equal opportunity and labor standards requirements, as described previously. The Grantee is responsible for construction review, as well. This may also be done by the Design Professional. If so, it should be included in the scope of services of the professional services contract. Construction review includes observation of the Contractor’s work to provide a greater level of assurance regarding the Contractor’s compliance with the drawings and specifications.

Written construction observation reports must be maintained for each project.

Construction review by a Design Professional and the Resident Project Representative can include:

1. Monitoring construction to alert the Grantee of the need for adjustments in design or scope as dictated by actual field conditions, and the need for contract amendments (all contract amendments affecting alignment and detail or dimensions shown on the drawings must include revised drawings).

2. Monitoring the specified tests, as necessary, to verify general conformance with the drawings and specifications;
3. Verification of in-place quantities;
4. Review of Contractor's pay estimate and supporting information;
5. Review of shop drawings, materials, submittals and schedules;
6. Preparing punch-lists of work requiring correction; and
7. Conducting job conferences and inspections.

Exhibit 4-S includes an outline of "Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative".

Pay Applications

The Contractor may submit monthly requests for partial or progress payments to the Grantee. Written field observation reports, copies of field measurement notes, and test results must also be submitted with progress payment requests.

Upon receipt of a progress payment request and the related documentation, the Grantee must check Equal Opportunity and Labor Standards Compliance files to ensure that all payrolls have been received and checked and any restitution paid, and that employee interviews have been conducted and all discrepancies corrected. The request for payment may then be submitted to the DFA Project Manager for processing, following the procedure outlined in Chapter 1.

Prompt Payment Act

All construction contracts shall provide that payment for amounts due shall be paid within 45 days after the owner receives an undisputed request for payment. If the owner fails to pay the contractor within 45 days, the owner shall pay interest to the contractor beginning on the 22nd day after payment was due, computed at 1-1/2% per month or fraction of a month until the payment is issued. **DFA will only process pay requests if all supporting documentation is received, to include updated payrolls for the period covered in the pay application, and is not responsible for payments to contractors or any applicable interest incurred as a result of late payments.**

Change Orders

Extra work that involves a change in cost or time requires a written change order. Change orders may be initiated by the Grantee, Contractor, Resident Project Representative, or the Design Professional.

Each change order must be accompanied by a supporting statement, which describes why the change is necessary, the estimated cost, and any related drawings and specifications. All change orders must be approved by the Grantee and the DFA Project Manager before the Contractor may undertake the work, unless the work was of an emergency nature and was required to alleviate an imminent threat to life or property. For emergencies, the Grantee should contact the DFA Project Manager by telephone to explain the situation, and inquire whether DFA will be able to approve the

change order later when the paperwork is ready. Change orders should be kept to an absolute minimum.

4.12 Monitor Labor Standards Compliance

Labor Standards Officer

The Grantee must designate a Labor Standards Officer (LSO) with the responsibility of administration and enforcement of state and federal labor standards provisions. The LSO is also responsible for ensuring that the proper Davis-Bacon wage decision and contract clauses are incorporated in the contract for construction, monitoring labor standards compliance by conducting interviews with construction workers at the job site, and reviewing payroll reports. The Grantee must submit an individual “Appointment of Labor Standards Officer” (**Exhibit 4-N**) for each CDBG contract. This person is ultimately responsible for ensuring that all proper signage is posted at the construction site, conducting (or overseeing) monthly construction on-site interviews, reviewing all payrolls for accuracy and seeing that restitution is made in a prompt and efficient manner if applicable.

Labor Standards Compliance

Once construction is underway, the Grantee must obtain copies of all weekly certified payroll submittals with the original signature on the Statements of Compliance signed by an officer of the Contractor who has the authority to bind.

On-Site Interview

By means of the weekly payroll submittals, the Grantee must conduct on-site interviews using the “Record of Employee Interview” (**Exhibit 4-O**). The purpose of the interview is to ensure that employees are being paid the prevailing rate for the work actually being performed and for overtime as required; that unauthorized deductions or kickbacks are not occurring; and that all information provided about the employees on the weekly payroll reports is correct.

These interviews must include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance (approximately 10% of each job classification working at the site). Onsite interviews should be conducted on a monthly basis throughout the course of construction.

The interview should take place on the job site and should be conducted privately (this is a one-on-one process).

The interviewer should observe the duties of workers before initiating interviews and document the work being done by the employee. Employees of both the prime contractor and subcontractors should be interviewed.

To initiate the interview, the authorized person shall:

1. Properly identify himself/herself

2. Clearly state the purpose of interview
3. Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission

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

1. The employee's full name;
2. The employee's permanent mailing address;
3. 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 no other work; and
4. The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.

Commonly, persons being interviewed will report net earnings rather than gross income. If this is the case, please verify the payrolls to ensure the employee is being properly paid. In this event, the following should occur:

1. Ask for any records.
2. Arrange to re-interview the employee.
3. Report the worker's statement of job classification
4. Observed duties and tools used by the worker

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

If there are discrepancies, detailed statements are necessary.

1. Enter any comments necessary; and
2. Enter date interview took place.

The Employee Interview sheet must be compared to the corresponding contractor and subcontractor payroll information and applicable wage rate decision.

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 upon review of the payroll, the Standards Labor Officer determines that the employee is being underpaid, DFA must be informed as quickly as possible. 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). The complaint must be investigated and resolved. Contact your DFA Project Manager if necessary.

The Grantee is also required to ensure that the project site is posted with the required posters and a copy of the wage decisions. Payment may be withheld from a Contractor as an inducement to comply with this process. Payment of restitution must be documented.

Payroll Review

Contractors are required to submit weekly payrolls and certifications to the Grantee. The Grantee will submit reviewed payrolls and payroll reviews to DFA at least monthly basis, but preferably every 2-3 weeks.

Employees must be paid at least once a week. The weekly “Certified Payroll and Statement of Compliance” (**Exhibit 4-P**) submitted by the Contractor should include the name, address, classification and rate of pay; number of hours worked each day of straight time and overtime; total wages due; the sources and amount of any deductions; and net pay for each employee.

The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. Certified payroll reports should be submitted by the prime/general contractor to the grantee within a reasonable timeframe as to ensure compliance, typically no more than 10 working days following the end of the payroll period.

The payrolls should be reviewed by the general contractor to ensure there are no discrepancies or underpayments. The prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and potentially liquidated damages that may be assessed for overtime violations.

Grantee should keep records of the dates payroll are received. Payrolls must be examined promptly by the Grantee to ensure compliance with all labor standards and noted on “Payroll Review Worksheet” (**Exhibit 4-U**).

If payroll information has not been forwarded to your DFA Project Manager and a request for payment is submitted for construction costs, DFA will not process your request until all payroll information is received and if necessary any outstanding issues resolved.

The following are some of the details that must be noted:

1. Workers are classified correctly.
2. The rate of pay for each employee should be checked against the federal and state wage decisions to ensure the worker is being paid the prevailing wage (higher of the two rates).
3. The number of hours worked should be checked to ensure that no less than time-and-a-half is being paid for all hours worked in excess of 40 per week.
4. Deductions should be reviewed to determine that they are permissible. Permissible deductions include FICA, withholding of federal or other state income taxes, health insurance, pensions, unemployment benefits, and life insurance. Deductions not

required by law may be made only with the permission of the employee and must be documented in writing by the employee.

5. The “Certified Payroll and Statement of Compliance” (**Exhibit 4-P**) should also be checked to ensure that it is signed by the owner or officer of the firm.

Restitution

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.

There are two types of pay wages, they are the basic rate and the fringe rate. The basic rate is what is considered the “normal” hourly pay rate. The fringe rate account for benefits to which employees are entitled. These benefits can include health insurance, pensions, 401 K, dental, vision, etc. Contractors can elect to pay for these benefits (in addition to the basic rate) by contributing towards appropriate programs for the benefit of the employee or by paying the employees cash in the same amount that would have gone towards the benefits program.

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.

There are also two classifications of working hours, standard and overtime (OT). Standard hours are calculated on a weekly basis and constitute hours worked up to 40/week. Overtime is considered any time worked in excess of 40 during the given work week. When employees work overtime, they are entitled to [(base rate x 1.5) + fringe rate].

Overtime pay example:

State wage is \$8/hr. + \$2 (fringe) = \$10/hr.; Federal wage is \$10/hr. + \$5 (fringe) = \$15/hr.

Prevailing wage is federal (\$15/hr.); Employee A works 50 hours during the week

Standard hours (40 hours @ \$15) = \$600

+ 10 OT hours @ ((10 x 1.5) + \$5) = \$200

Employee A should have been paid \$800/week.

Grantees must notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.

The employer is required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (e.g., payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:

1. Each employee to whom restitution is due and their work classification
2. The total number of work hours
3. The adjustment wage rate (the difference between the required wage rate and the wage rate paid)
4. The gross amount of restitution due
5. Deductions
6. The net amount to be paid

A signed Statement of Compliance must be attached to the corrected “Payroll” (**Exhibit 4-P**) and a copy of the cleared check(s) as evidence the employee received all payments.

The grantee should review the corrected 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. Additional payments must be documented on a supplemental correction payroll within 30 days.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to return the funds to the Grantee who in turn will return funds to DFA. At time of receipt DFA will place in an account the amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The Grantee should continue to attempt to locate the unfound workers for three (3) years after the completion of the project. After three years (3), any amount remaining in the account for unfound workers will be forwarded to HUD.

Overtime Violations

One of the violations that might be discovered during a review of payrolls involves non-payment of overtime for employees who work in excess of 40 hours in a given week.

Grantees should be aware that it is important to review payrolls weekly and report underpayments in overtime violations as soon as they occur. Employee interviews must be conducted monthly. Failure to identify violations early may result in substantial liquidated damages being assessed. (29 CFR Part 5, §5.8)

Restitution pay example: (same state, federal and prevailing wages apply)

Employee A is paid incorrectly @ state rate (\$10) for 50 hours during the week

Standard hours (40 hours @ \$10) = \$400

+ 10 OT hours @ ((8 x 1.5) + \$2)] = \$160;

Employee was paid \$560/week

Standard hour adjustment rate = (\$15 - \$10) = \$5/hr.;

Standard pay owed (\$5 x 40 hrs.) = \$200

OT pay owed ((\$10 x 1.5) + \$5) = \$20/hr.

OT paid $((\$8 \times 1.5) + \$2) = \$14/\text{hr.}$

OT adjustment rate = $(\$20 - \$14) = \$6/\text{hr.};$

OT pay owed $(\$6 \times 10 \text{ hrs.}) = \60

Total owed = (Standard owed + OT owed) = \$260/week

Any violations or discrepancies must be resolved as soon as possible. If this occurs the following process must be initiated immediately:

Submit Overtime Violations Report. The Grantee must submit a copy of the completed “Overtime Violations Report” (**Exhibit 4-Q**) to their Project Manager. With help computing overtime, please reference the Prevailing Wage Resource Book, Chapter 10. Overtime Pay on DBA/DBRA Contracts located here at <https://www.dol.gov/whd/recovery/pwrp/toc.htm>

Notice of Intent to Assess. In every case where overtime violations are disclosed, DFA shall notify the contractor/employer the amount of liquidated damages computed at the rate of \$33.00 per day for each day such individual was required or permitted to work in excess of the standard 40 hours workweek without payment at the required overtime. The notice shall include the basis for the computations, and the Grantee’s intent to assess damages. A copy of the notice shall be sent to the prime contractor when the employer involved is a subcontractor. The notice shall inform the contractor/employer that it has 30 days to appeal.

Withholding of Funds. DFA must withhold sufficient funds for liquidated damages from the next payment to the Grantee.

Reduction or waiver of liquidated damages. The contractor/employer may request a reduction or waiver of liquidated damages. The only grounds for approving a reduction or waiver are where the computation of liquidated damages is incorrect or that the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the contractor/employer. The contractor/employer’s request must be made in writing within 30 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted. A copy of this letter is also sent to the DFA.

Review contractor/employer request. DFA and Grantee will jointly review the contractor/employer request for reduction or waiver of liquidated damages. In cases involving liquidated damages of \$500 or less, DFA has the ability to reduce the amount of liquidated damages or release the contractor from the liability for liquid damages. In cases involving more than \$500, DFA will transmit their decision to HUD, who then forwards the recommendation to the U.S. Department of Labor (DOL) for final determination.

Should the Contractor not respond in the prescribed period; or DFA, HUD, or DOL not approve a waiver or reduction; liquidated damages shall be collected and paid to the U.S. Treasury.

Please Note: The Contractor is responsible for overtime payment to all employees. The contract requires that all subcontracts contain clauses imposing statutory overtime

requirements. Where the required provisions do not appear in the subcontract, the contractor alone is responsible for any underpayments and liquidated damages.

Equal Opportunity Compliance

Grantees must visit the construction site to ensure that the project site is posted with the required EEO notices. This is usually done in conjunction with employee interviews for labor standards compliance.

4.13 Accept and Close-Out the Project; Make Final Payments

Acceptance

When construction is complete, the Contractor must certify completion of the work and submit a final request for payment. The Grantee must then arrange for a final inspection and notify the DFA Project Manager of the date. The Grantee and the Design Professional should make the final inspection and prepare a written report prior to the issuance of a final certificate of payment.

Final Payment

Before making final payment (less ten percent), the Grantee must ensure that:

1. All Weekly Payrolls and Statements of Compliance have been received, checked, and discrepancies resolved;
2. All discrepancies from on-site interviews have been resolved;
3. All other required equal opportunity and labor standards provisions have been satisfied;
4. All contract submittals have been received;
5. All claims and disputes involving the contractor have been resolved; and
6. All files are complete including record (as-built) drawings.

Final Payment: The final 10% of the Grant Award will not be paid to Grantee until all required closeout documents have been received and approved by DFA.

The Grantee must also prepare the “Final Wage Compliance Report” (**Exhibit 4-R**), “Employee’s Restitution Receipt” (**Exhibit 4-R-1**), and “Employee Restitution Summary” (**Exhibit 4-R-2**) that summarize the contractor’s performance to the DFA Project Manager as part of the project closeout package and placed in the Labor Standards Compliance file.

Project Closeout

The project closeout package must contain the following items:

1. Progress/Final Report
2. Final Wage Compliance Report
3. Contract and Subcontract Activity Report
4. Engineer’s Letter of Certification and Final Acceptance

5. Final Adjusting Change Order with tabulations of cost over-runs and under-runs, if applicable
6. Owner's Statement of Acceptance and occupancy permit
7. Design Professional and Contractor's final billings
8. Final Drawdown Request to make final payment to the Design Professional and Contractor
9. Request for Payment/Financial Status Report
10. Contractor's Affidavit of Compliance and all lien releases
11. A copy of record (as-built) drawings
12. Written consent of surety, if any, to final payment
13. Contractor's letter stating that no subcontractors were employed, if applicable
14. Labor and Material Payment Bond with associated Power of Attorney
15. Performance Bond with associated Power of Attorney

4.14 Maintain Files

The files required to be maintained are listed on the Monitoring, Construction, Labor, and Closeout checklists. The Grantee may use "Construction Contract Checklist" (**Exhibit 4-T**) to crosscheck the content of contract documents before bidding, and to track required actions during construction.