



Texas General Land Office

Community Development and Revitalization

“The GLO stands ready to help our state maximize the use of this disaster recovery funding to build back stronger and more resilient communities.”

~ Commissioner George P. Bush

Davis-Bacon 101



Agenda

- Laws & Regulations
- Bid/Contract Requirements
- CDBG-DR Applicability
- Enforcement
- Reporting
- Disputes & Remedies
- Questions?

Presenter

Les Warner, ICF



Icons



Future Training

Learning Objectives



After the training, Davis-Bacon 101 participants will:

1. Understand the basics of labor standards administration and enforcement for CDBG-DR funded projects or programs
2. Learn what steps to take to remain in compliance and resolve discrepancies

Key Resources



DIGITAL RESOURCE MANUAL: DAVIS-BACON 101

DAVIS-BACON LABOR STANDARDS

Davis-Bacon Labor Standards require that workers on projects triggering compliance be paid based on the federal prevailing wage requirements. Title I of the Housing and Community Development Act of 1974 requires the payment of local prevailing wage rates (determined by the U.S. Department of Labor) to all workers on CDBG-DR construction projects in excess of \$2,000. (42 USC §5310; 40 USC 3142(d)). These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process. Even if CDBG funds finance only a portion of a construction contract, Davis-Bacon requirements still apply to the entire construction contract.

Activities financed by CDBG-DR that are not "construction work" do not trigger Davis-Bacon requirements. Construction work that is financed by HCDA funds such as CDBG-DR are not activities other than construction work which do not trigger Davis-Bacon requirements (property acquisition, purchase of equipment, architectural and engineering, legal, accounting, construction management), other non-construction items (licenses, real estate taxes, tenant allowances for such items).

Subrecipients, in partnership with GLO, must administer their CDBG-DR funds, enforce Davis-Bacon requirements and to ensure workers' rights are protected. Under the CDBG-DR Subrecipient Agreement, Subrecipients have agreed to administer Davis-Bacon labor standards requirements and have accepted the responsibilities outlined in Chapter 9 of the **GLO CDBG-DR Implementation Manual**.



Key Point

Davis-Bacon Labor Standards apply to all CDBG-DR construction projects in excess of \$2,000

CDBG-DR

DAVIS-BACON 101 BRIEF

Davis-Bacon Objectives

Davis-Bacon establishes requirements for paying the local prevailing wages on public works projects for laborers and mechanics. CDBG-DR grantees and subrecipients must take steps to verify and demonstrate that they are complying with this requirement for all construction projects in excess of \$2,000. Key objectives of Davis-Bacon requirements include:

- Apply Davis-Bacon requirements properly
- Support contractor compliance through education and guidance
- Monitor contractor performance
- Identify and follow up on underpayments
- Pursue debarment against repeat violators



Defining a Property

Davis-Bacon applies to properties, which are defined as one or more buildings on an undivided lot or on contiguous lots that are commonly-owned and operated as one rental, cooperative, or condominium project. Examples of a Davis-Bacon property include:

- All commercial and public buildings
- 3 apartment units located on 5 units located on one lot
- 8 single-family homes located on contiguous lots

Steps to Davis-Bacon Compliance

Subrecipients should follow the steps outlined below to remain compliant with Davis-Bacon requirements:

Labor Standards History



Davis–Bacon Act of 1931

- Requirement for paying the local prevailing wages on public works projects for laborers and mechanics in excess of \$2,000
- Motivated by concerns of workers coming from other labor markets and undercutting the local labor force
- Passed by Congress and signed into law by Herbert Hoover in response to the Great Depression

Labor Standards Objectives



- Apply Davis-Bacon requirements properly
- Support contractor compliance through education and guidance
- Monitor contractor performance
- Identify & follow up on underpayments
- Pursue debarment against repeat violators

CFR Title 29 – Labor



Part 1 – Procedures for Predetermination of Wage Rates

- Determining and publishing prevailing wages
- Effectiveness of wage decisions

Part 3 – Contractors and Subcontractors on Public Building or Public Work

- Prohibits kickbacks
- Payroll submission and certification
- Deductions

Part 5 – Labor Standards Provisions

- Contract provisions and stipulations
- Agency responsibilities

Applicable Laws



Davis-Bacon Act (DBA)

- Direct federal contracts
- Construction, alteration or repair >\$2K
- Locally prevailing wage & fringe benefits
- Weekly wage payments

Davis-Bacon Related Acts (DBRA)

- Additional provisions for federally funded construction projects
- Includes Fair Labor Standards Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-kickback Act)



Applicable Laws (cont.)



Fair Labor Standards Act (FLSA)

- Sets federal minimum wage – *currently \$7.25/hour*
- Defines overtime as more than 40 hours per week
- Defines overtime pay as time + ½ base wage (BW) + standard fringe benefits

Contract Work Hours and Safety Standards Act (CWHSSA)

- Requires overtime pay for workers on construction contracts > \$100,000 that work more than 40 hours/week
- Overtime pay = time and ½ base wage (BW) + ST fringe benefits

Applicable Laws (cont.)



Copeland (Anti-kickback) Act

- Only applies under Davis-Bacon Act / Davis-Bacon Related Acts
- Prohibits kickbacks
- Regulates deductions
- Requires payroll certification

Test Your Knowledge



True or False

Davis-Bacon requirements do not apply to subcontracts that are less than \$2,000

 **False**

The \$2,000 threshold applies to the total value of the construction contract

Applicability to CDBG-DR



- Federal funds pay in whole *or in part* for any direct costs of construction; *AND* the project meets one of the following thresholds:
 - Residential property with 8+ units; *OR*
 - Non-residential property receiving more than \$2,000 of construction-related work
- Construction includes some water/sewer extensions
- Special consideration for:
 - Installation costs of equipment if costs incidental & certain type of work
 - Demolition-only (no construction planned)

Subrecipient Responsibilities



Labor Standards Responsibilities

- Designate appropriate staff
- Establish construction contract management system
- Ensure all bid documents/contracts contain proper wage decision and federal labor clauses
- Ensure no contract is awarded to ineligible contractors
- Conduct on-site inspections (including on-site interviews)
- Maintain full documentation
- Comply with all GLO/DOL requirements
- Submit reports as required
- Refer complex enforcement actions to GLO

Definition of a Property



- One or more buildings on an undivided lot or on contiguous lots or parcels that are commonly-owned and operated as one rental, cooperative, or condominium project
 - Davis-Bacon applies to entire “property” once triggered
 - Typically excludes single-family homeowner properties
- Example of a Property:
 - 3 apartment buildings each with 5 units located on one tract
 - 8 single-family (not homeownership) houses located on contiguous lots

Davis-Bacon Exceptions



- Subrecipients can pay for non-construction costs without triggering Davis-Bacon including:
 - Real property acquisition
 - Architectural/Engineering fees
 - Legal or accounting services
 - Real estate taxes
- Only private funds used for rehabilitation or construction
- Labor types excluded from Davis-Bacon:
 - Volunteer labor
 - Sweat equity
 - Employees of subrecipient (force account labor)

Davis-Bacon Exceptions



Exempt because it is a single residential structure that is owner-occupied (one property with one unit)



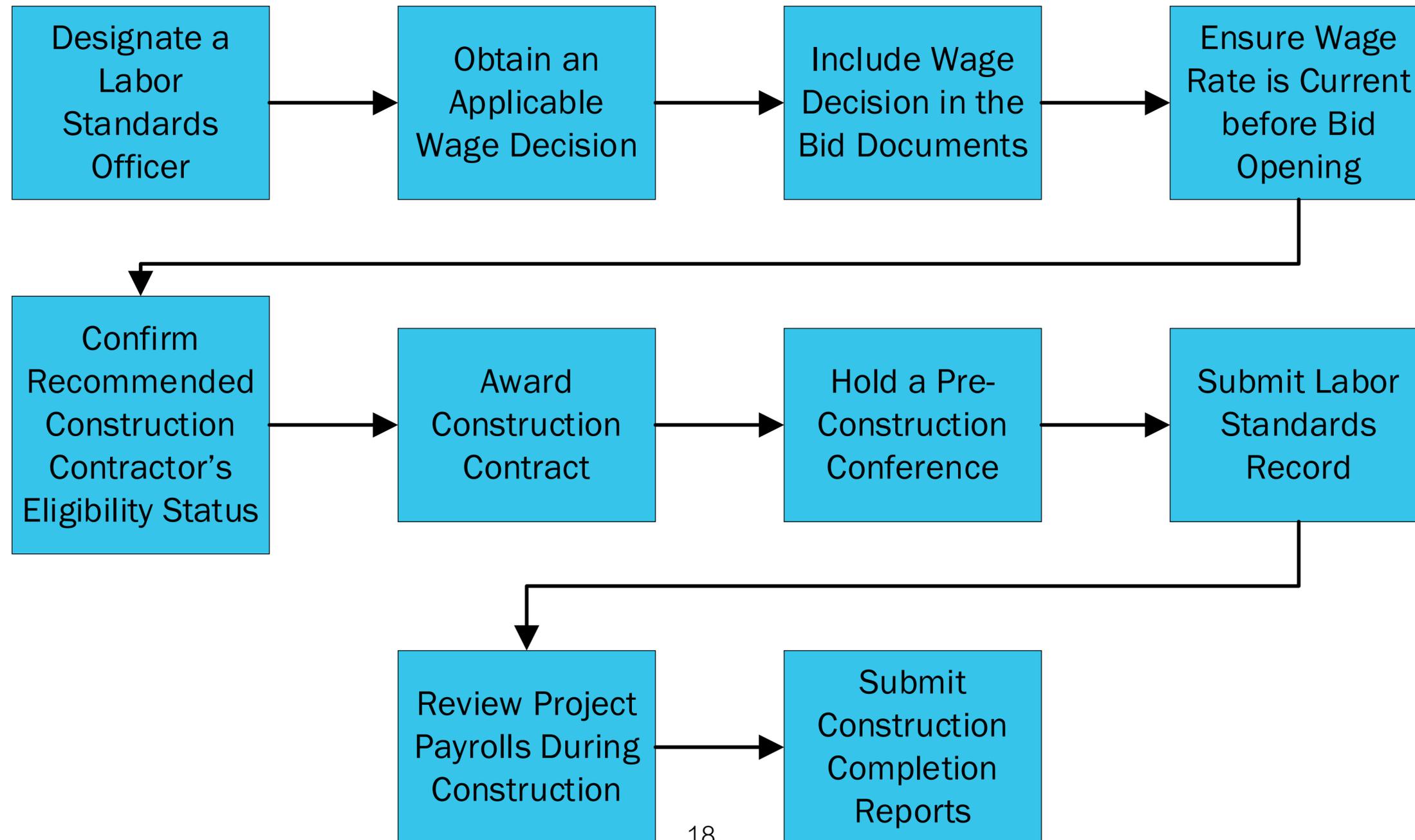
Construction work performed on this four-unit apartment building would not trigger Davis-Bacon

Demolition



- Davis-Bacon does not apply to “demolition-only” projects
- If demolition is considered part of greater construction project, Davis-Bacon does apply:
 - If subsequent construction on the site is planned as part of same contract
 - If subsequent construction is contemplated as part of a future construction project under another Federally funded activity

Labor Standards Compliance Steps



Designate Labor Standards Officer



- Projects with construction activities must have a designated Labor Standards Officer (LSO)
- Designation of the LSO included in all subrecipient agreements
- Required for projects using force account labor
- LSO responsible for providing wage rates, labor standards advice and support, & monitoring compliance including conducting interviews and weekly payroll reviews along with any enforcement actions required
- Use **Appointment of Labor Standards Officer** form

Obtain Wage Rate Decision



Wage decisions

- Established and modified regularly by the U.S. Department of Labor (DOL)
- List construction work classifications (i.e., Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates, fringe benefits and geographic location of the prevailing wage rate
- Categorized into four groups (Heavy, Highway, Building, and Residential Construction)
- Apply to specific geographic areas, usually a county or group of counties



Obtain Wage Rate Decision



- LSO must obtain the applicable wage rate for each specific construction contract where Davis-Bacon applies
- LSO must complete a **GLO Wage Rate Issuance Notice** and retain in the local file
- Obtained at beta.sam.gov (*if work classification is missing, contact GLO*)
- Posted at job site with Davis-Bacon Employee Rights poster



Wage Decision in Bid Documents



- Wage decisions must be included in the bid package
- Contractors construct bids based on applicable wages for the schedule of trades and workers included in the project
- Wage decision is based on location and scope of work for the project
- LSO must ensure wage rates are current at the time of the bid opening

Construction Types



Type	Examples
Residential	Projects up to 4 stories (includes all incidental items)
Building	Residential with 5+ stories Fire stations, hotels, office buildings, subway stations, warehouses, etc.
Heavy	Antenna towers, canals, chemical complexes, dams, docks, etc.
Highway	Roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas not incidental to building/heavy construction

Critical Elements of WD



	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 24.28	14.16

BOIL0074-003 01/01/2017		
	Rates	Fringes
BOILERMAKER.....	\$ 28.00	22.35

CARP0551-008 04/01/2016		
	Rates	Fringes
CARPENTER (Excludes Acoustical Ceiling Installation,Drywall Hanging, Form Work and Metal Stud Installation).....	\$ 23.05	8.78

ELEC0716-005 08/28/2017		

Current Wage Rate at Bid Opening



- Wage rates locked in at bid opening (*if contract awarded within 90 days*)
- LSO must ensure wage decisions in the bid specification for construction are still valid or current for the bid opening date
- LSO must reverify the wage rates 10 calendar days prior to the bid opening
- Complete the **GLO Ten Day Confirmation Form**

Current Wage Rate at Bid Opening



- Prospective bidders must be notified if wage rates change up to 5 days prior to the Bid Opening Date and retain copies of addenda issued with new wage rates
- Modifications to wage decisions by DOL less than 5 days before bid opening may be disregarded if found, as there is insufficient time to notify bidders
 - If this occurs, the LSO should add a written explanation to the Subrecipient Agreement file



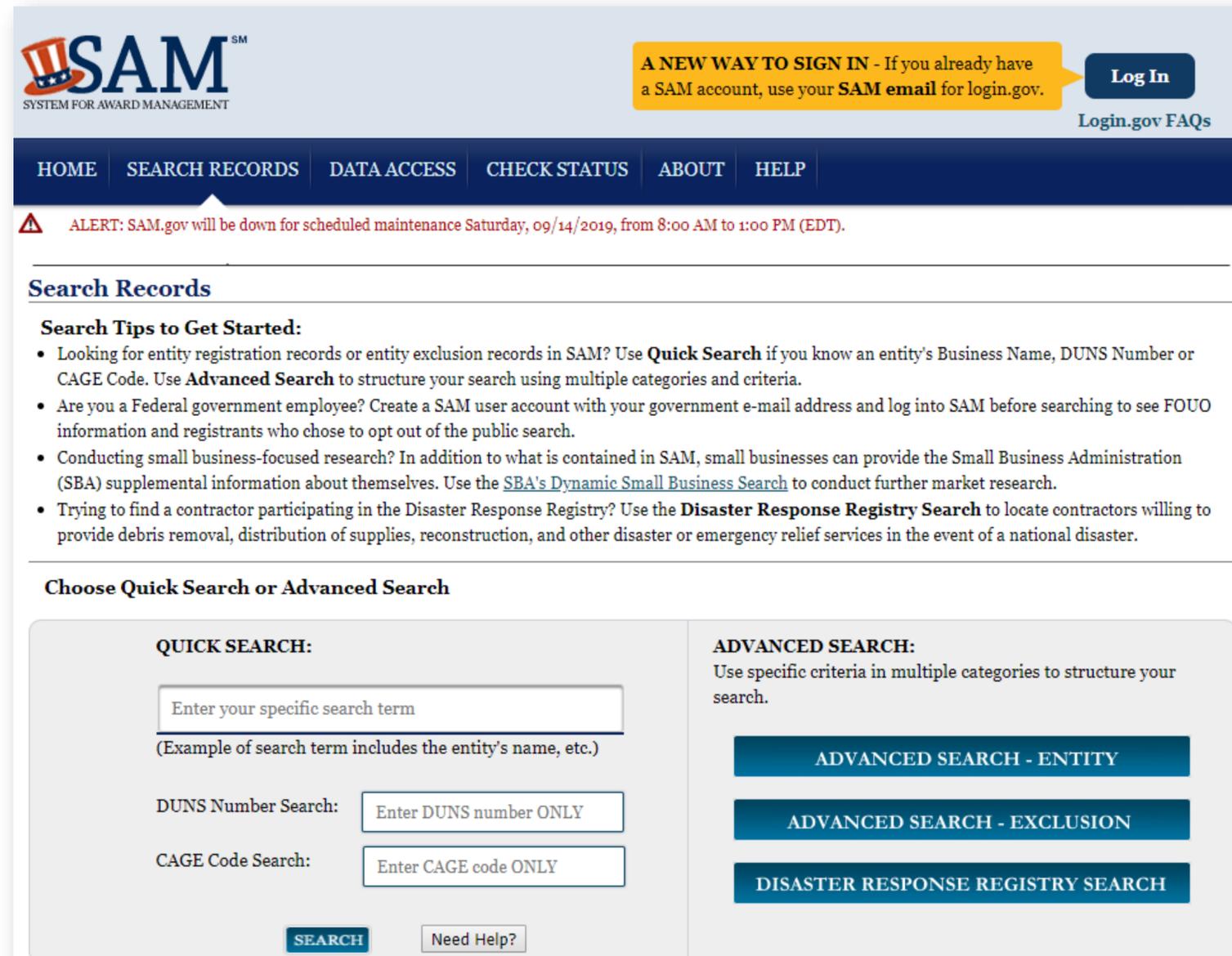
Confirming Contractor Eligibility



LSO Responsibilities

- Verify all contractors are eligible to receive a federally funded contract
- Use link for System of Award Management (SAM) <https://www.sam.gov/>
- Verify that all prime contractors (and subcontractors) have active SAM registrations and are not listed as debarred in SAM
- Print records of verifications from SAM, retain copies in the local files, and provide to GLO upon request
- Record the date the SAM check was conducted

System for Award Management



SAM
SYSTEM FOR AWARD MANAGEMENT

A NEW WAY TO SIGN IN - If you already have a SAM account, use your **SAM email** for login.gov. [Log In](#)

[Login.gov FAQs](#)

[HOME](#) [SEARCH RECORDS](#) [DATA ACCESS](#) [CHECK STATUS](#) [ABOUT](#) [HELP](#)

ALERT: SAM.gov will be down for scheduled maintenance Saturday, 09/14/2019, from 8:00 AM to 1:00 PM (EDT).

Search Records

Search Tips to Get Started:

- Looking for entity registration records or entity exclusion records in SAM? Use **Quick Search** if you know an entity's Business Name, DUNS Number or CAGE Code. Use **Advanced Search** to structure your search using multiple categories and criteria.
- Are you a Federal government employee? Create a SAM user account with your government e-mail address and log into SAM before searching to see FOUO information and registrants who chose to opt out of the public search.
- Conducting small business-focused research? In addition to what is contained in SAM, small businesses can provide the Small Business Administration (SBA) supplemental information about themselves. Use the [SBA's Dynamic Small Business Search](#) to conduct further market research.
- Trying to find a contractor participating in the Disaster Response Registry? Use the **Disaster Response Registry Search** to locate contractors willing to provide debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief services in the event of a national disaster.

Choose Quick Search or Advanced Search

QUICK SEARCH:

(Example of search term includes the entity's name, etc.)

DUNS Number Search:

CAGE Code Search:

[SEARCH](#) [Need Help?](#)

ADVANCED SEARCH:
Use specific criteria in multiple categories to structure your search.

[ADVANCED SEARCH - ENTITY](#)

[ADVANCED SEARCH - EXCLUSION](#)

[DISASTER RESPONSE REGISTRY SEARCH](#)

Award the Construction Contract



- Each contract subject to Davis-Bacon must include the labor standards compliance clauses and a Davis-Bacon wage decision

Federal Labor Standards Provisions (*HUD-4010*)

- Full HUD-4010 document must be included in contract and bid documents, including:
 - In text
 - By reference
 - Bid documents
 - Contract
 - Subcontracts

Test Your Knowledge



True or False

When a wage decision becomes effective (locks in), no future modifications apply to the contract



Required Posters



- Davis-Bacon poster must be displayed in a prominent and accessible place at the work site
- Other required posters:
 - Notice to All Employees Working on Federal or Federally Financed Construction Projects
 - Safety and Health Protection on the Job
 - Equal Employment Opportunity is the Law

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

**FOR LABORERS AND MECHANICS
EMPLOYED ON FEDERAL OR
FEDERALLY ASSISTED
CONSTRUCTION PROJECTS**

PREVAILING WAGES	You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.
OVERTIME	You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.
ENFORCEMENT	Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.
APPRENTICES	Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.
PROPER PAY	If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



WH1201 REV 0617

Pre-Construction Conference



- Discuss contractual requirements and performance schedules
- Subrecipients should retain minutes that include:
 - List of attendees
 - Outline of required federal/state labor requirements (GLO Pre-Construction Conference Report)
- Prime Contractor must post a copy of the wage decision and Davis-Bacon poster at the job site

Submit Labor Standards Report



- LSO must submit **GLO Labor Standards Record (LSR) form** to GLO Grant Manager or upload in GLO's system of record if available for construction contracts over \$2,000
- LSR must be submitted after the pre-construction conference and prior to the first Request for Payment for construction work
- Separate LSR must be submitted for each prime construction contractor and include all subcontractors listed under that prime along with a Financial Interest Report

Review Payrolls During Construction



Payrolls

- *WH-347 (or other forms that include required information)*
- Submitted every week that work is performed
- Verifies who, what, how many, and how much
- Signature
 - Must be signed by Owner, Officer, or Other Authorized Individual
 - Must be original payroll in ink (no pencil, signature stamp, xerox, or “for”)
 - Electronic payrolls

NOTE: Confirm that math is correct when reviewing!

Reviewing Payrolls



- The LSO must review the payroll submissions in a timely manner to ensure that:
 - Workers are properly listed on the payroll for the days, work classification, and rate of pay (compare to interview forms)
 - Payrolls are complete and signed
 - Employees are paid no less than the wage rate for the work classification shown
 - Apprentice and trainee certifications are submitted
 - Employee authorizations for other deductions are submitted (*if applicable*)
- Documents must be retained for ≥ 3 years from completion (do not discard until notified by GLO)

On-Site Interviews



- Interview Protocols
 - Onsite and on-on-one
 - Observe duties and tools used before initiating interviews
 - Collect key information (full name, address, hours worked, classification, hourly rate, pay deductions)
 - Ask worker for complaints or questions
- Compare interview forms to payrolls and sign forms
- Resolve issues with prime contractor

Disputes & Remedies



- Inadvertent violations can be easily resolved if identified early
- Willful violations have a bigger financial impact and are the priority for detection
- When violations are detected, subrecipients should follow-through until corrected

Common Indicators of Payroll Falsification

- Persistent patterns over time
- Anomalies and mistakes
- Employee ratios
- Misclassification
- Missing workers

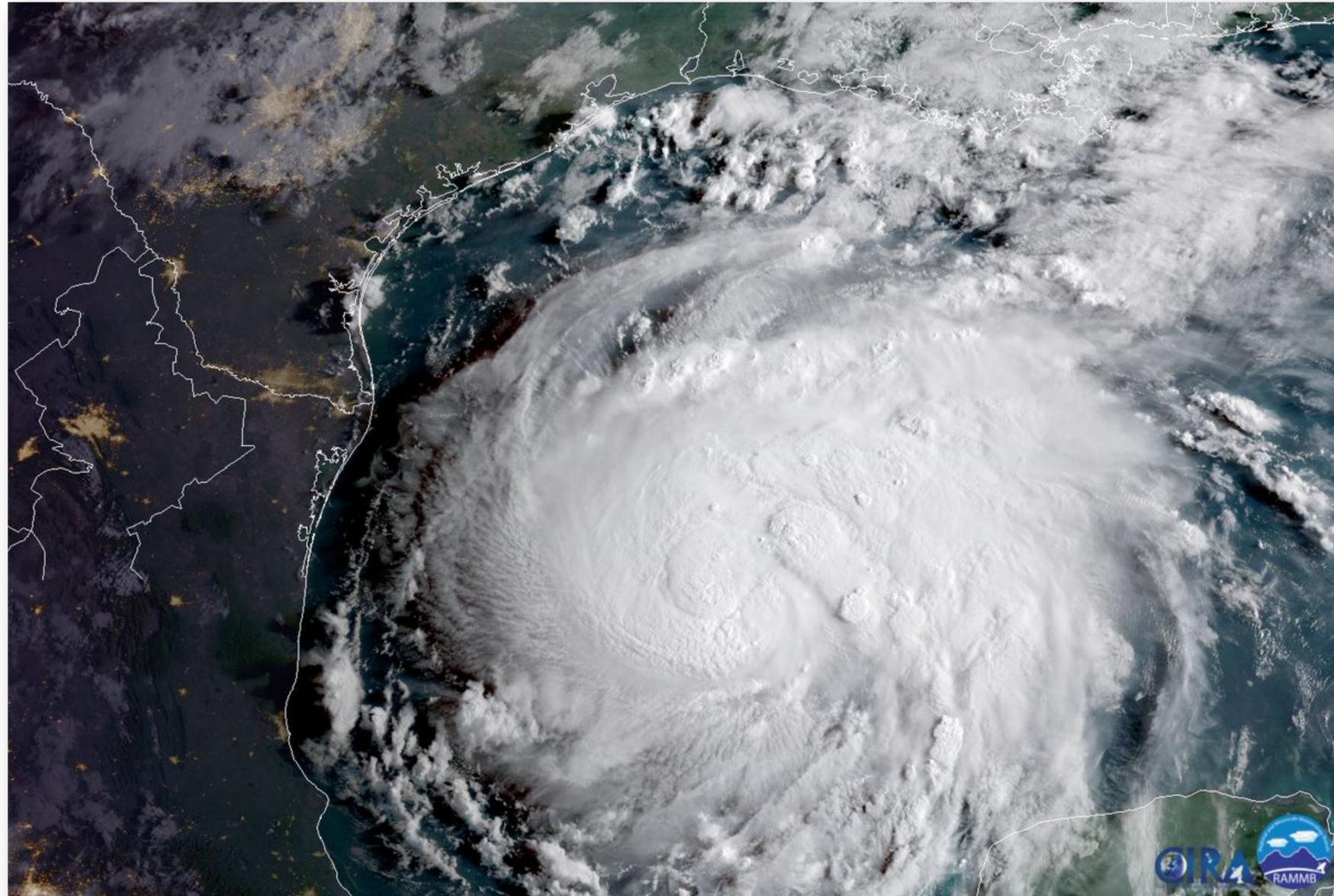


Wage Restitution



- Wage restitution should include the full amount due and be paid promptly
- Contractors must provide required documentation:
 - Certified check/cashier's check
 - Copy of cancelled check
 - Employee receipt
- Restitution Calculation Formulas:
 - $\text{Total hours} \times \text{adjusted rate} = \text{amount due}$
 - $\text{Total earned} - \text{total paid} = \text{amount due}$

Questions?



Survey



[Davis-Bacon 101 Survey](#)