



**CITY OF CARROLLTON**  
**GENERAL CONDITIONS**  
**AND**  
**SPECIFICATIONS**  
**FOR**  
**REQUEST FOR PROPOSAL FOR**  
**CROSBY REC CENTER PLAYGROUND**

**RFP # 18-032**

**CLOSING DATE**

**MONDAY, JULY 30, 2018**

**11:30 AM**

## NOTICE TO BIDDERS

*The terms “bid” and “RFP” used in this document have the same meaning.*

Sealed RFP's will be received by the City of Carrollton at the office of Patty Helms, Purchasing Manager, City Hall Building, 1945 E. Jackson Road, Carrollton, Texas 75006-1790 **or via email provided a digital signature is included**, until the hour **11:30 AM on the 30<sup>th</sup> day of July 2018**; at which time bids duly delivered and submitted will be considered for supplying the following:

### **RFP FOR CROSBY REC CENTER PLAYGROUND RFP # 18-032**

The submitted bids will be opened on at **11:30 AM** on the due date above at the place designated for the submission of bids.

Bidders shall have performed similar scope of work within the past calendar year. Bidders are expected to inspect the site of the work and to inform themselves regarding local conditions and conditions under which the work is to be done. All bidders must comply with the rules and regulations for the Americans with Disabilities Act of 1990.

Instructions to Bidders, Proposal Forms, Specifications, Plans and Contract Documents may be examined without charge at the office of the Purchasing Manager, City Hall, 1945 E. Jackson Road, Carrollton, Texas 75006-1790. This bid is also on the City's website at:  
<http://www.cityofcarrollton.com/index.aspx?page=424>.

There are no plans associated with this bid package. Any bid received after stated closing time will be returned unopened. If bids are sent by mail to the Purchasing Manager, the bidder shall be responsible for actual delivery of the bid to the Purchasing Manager before the advertised date and hour for opening of bids. If mail is delayed by the postal service, courier service, an ISP – internet service provider or in the internal mail system of the city of Carrollton beyond the date and hour set for the bid opening, bids thus delayed will not be considered and will be returned unopened.

**Information concerning the bid specifications:** may be obtained by contacting Kim Bybee, Parks Maintenance Manager at [kim.bybee@cityofcarrollton.com](mailto:kim.bybee@cityofcarrollton.com). All emails to Kim should also copy [purchasing@cityofcarrollton.com](mailto:purchasing@cityofcarrollton.com).

**Information on the bid process/procedures:** may be obtained from Patty Helms, at 972-466-3115 or [purchasing@cityofcarrollton.com](mailto:purchasing@cityofcarrollton.com).

**PLEASE NOTE: THE FUNDS FOR THIS PROJECT INVOLVE CDBG/FEDERAL FUNDS. AS SUCH, CERTAIN FEDERAL GUIDELINES MUST BE FOLLOWED.**

The RFP will be evaluated based on the following criteria: Creativity in design 40%, Price 25% and Quality and Quantity of playground material and structures 35%. The estimated total budget for this project is \$75,000.00

Until the final award by the city of Carrollton, said City reserves the right to reject any and/or all bids, to waive technicalities, to re-advertise, to proceed otherwise when the best interests of said City will be realized hereby. Bids will be submitted sealed and plainly marked with the date and time of opening.

The city of Carrollton Municipal Building is wheelchair accessible. For accommodations or sign interpretive services needed for bid openings, please contact the Purchasing Office 48 hours in advance at (972) 466-3133.

CITY OF CARROLLTON, TEXAS



Patricia Helms, Purchasing Manager

**Publication Dates: Sunday, July 15, 2018 & Sunday July 22, 2018**

**Closing Date: Monday, July 30, 2018 @ 11:30 AM**

## PROPOSAL OF BIDDERS

All:

The following bid is made for furnishing the materials/services for the city of Carrollton, Texas. The undersigned declares that the amount and nature of the materials/services required is understood and that this proposal is in strict accordance with the requirements of the RFP and is a part of this bid, and that there will at no time be a misunderstanding as to the intent of the specifications or conditions to be overcome or pleaded after the bids are opened.

The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The proposer shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The undersigned hereby proposes to furnish any supplies or equipment necessary for this, F.O.B. Carrollton, Texas, freight pre-paid at the unit prices quoted herein after notice of bid award. The undersigned affirms that they are duly authorized to execute this contract that this company, corporation, firm, partnership or individual and has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this bid.

Texas House Bill 89 that went into effect on 9-1-17 forbids Texas government entities from contracting with any company that excludes or boycotts Israel. Also, Senate Bill 252 prohibits Texas governments from contracting with companies who do business with Iran, Sudan, or foreign terrorist organizations. If your company falls into either of these new state laws, please disclose this in your bid response and provide details of which law your company falls under.

Also, the vendor who wins a bid award must guarantee that they will not employ a subcontractor in the performance of the bid award who falls under either law. If you do not disclose this with your bid proposal, the city will assume you will comply with this requirement. If you need to provide the city any detail regarding these new laws, please attach details as needed.

**Please sign on the line below as verification that your company is not excluded from contracting with the city of Carrollton by either Texas law, and will remain in compliance to these two laws for the term of the bid award.** ↓

**PROPOSAL OF BIDDERS**

**RFP# 18-032**

**REQUEST FOR PROPOSAL FOR CROBY REC CENTER PLAYGROUND**

**Respectfully Submitted,**

**PLEASE PROVIDE A COPY OF  
YOUR W-9**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
CONTACT PERSON

\_\_\_\_\_  
MAILING ADDRESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP

\_\_\_\_\_  
PAYMENT ADDRESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP

\_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
E-MAIL ADDRESS

\_\_\_\_\_  
WEB PAGE

**HUB Vendor Status** \_\_\_\_\_ **YES** \_\_\_\_\_ **(attach certification)** **NO** \_\_\_\_\_

**HUB VENDORS:** HUB vendors (Historically Underutilized Business) are vendors who’s company is owned by either a minority or woman. If you are classified as a HUB vendor and have certification to prove this, please respond below and attach a copy of your certification. If you would like to read the Texas bid statute which references HUB vendors, please follow this link <http://www.statutes.legis.state.tx.us/SOTWDOcs/LG/htm/LG.252.htm>

**NO BIDS:** If response is not received in the form of a “BID” or “No BID” bidder will be removed from bid list. Please give a specific reason as to why you are unable to bid, i.e.: we do not sell the required product/service.

**NO BIDS may be faxed to: 972-389-9557** \_\_\_\_\_

**CITY OF CARROLLTON, TX**  
**18-032 CROSBY REC CENTER PLAYGROUND**

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## **GENERAL CONDITIONS**

### **ADDENDA**

**It is the responsibility of the vendor to check for addenda.** Addenda will be posted to the City's website: [www.cityofcarrollton.com/purchasing](http://www.cityofcarrollton.com/purchasing)

### **ANNUAL CONTRACT FUNDING**

The city operates on a fiscal year that ends on September 30<sup>th</sup>. Because state law mandates that a municipality may not commit funds beyond a fiscal year, this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

### **ASSIGNMENT OF BID/CONTRACT**

The successful bidder may not assign their rights and duties under and award without the written consent of the City's Purchasing Manager. Such consent shall not relieve the assignor of liability in event of default by their assignee.

### **RFP CONSIDERATION / TABULATION**

After RFP's are opened and publicly read, the RFP's will be tabulated for comparison on the basis of the bid prices and quantities (lowest responsible vendor) or by the best value method shown in the Proposal. Until final award of the Contract, the city reserves the right to reject any or all bids, to waive technicalities, and to re-advertise for new bids, or proposed to do the work otherwise in the best interests of the City.

The following items will be considered when an award is based on best value:

- The purchase price;
- The reputation of the bidder and of the bidder's goods or services;
- The quality of the bidders' goods or services;
- The extent to which the goods or services meet the municipality's needs;
- The bidder's past relationship with the municipality;
- The impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- The total long-term cost to the municipality to acquire the bidder's goods or services;
- Any relevant criteria specifically listed in the request for bids or proposals.

### **RFP SUBMISSION**

Bids may be submitted in person or by mail.

- Submit bids via mail to PO Box 110535, Carrollton, TX 75011-0535
- To submit a bid via mail, all documents must be returned and an original signature provided on the proposal to bidder's sheet.
- The City is not responsible for mail service. See page 2, paragraph 2 of the Notice to Bidders.

### **CANCELLATION OF RFP'S**

Bids may be cancelled with 30 days written notice with good cause.

## **CHANGES OR ALTERATIONS**

No part of this bid may be changed/altereD in any way. Vendors must submit written requests to change any specifications/conditions with their proposal. *Changes made without submission of a written request to this bid will result in disqualification.*

## **COMPLETING INFORMATION**

Bidder must fill in all information asked for in the blanks provided under each item. Failure to comply may result in rejection of the Bid at the City's option.

## **CONTRACT CLAUSE**

All bidders understand and agree that the vendor's bid response will become a legally binding contract upon acceptance in writing by the City. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.

## **DEFAULT**

In case of default of the successful bidder, the city of Carrollton may procure the articles from other sources and hold the bidder responsible for any excess cost occasioned thereby.

## **INDEMNIFICATION**

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the vendor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the vendor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, materialmen, or suppliers the vendor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action.

## **INSURANCE**

Deductibles, of any type, are the responsibility of the vendor/contractor.

## **PAYMENT TERMS & CONDITIONS**

All bids shall specify terms and conditions of payment, which will be considered as part of, but not control, the award of bid. City review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of invoice, materials or service. Bids which call for payment before 30 days from receipt of invoice, or cash discounts given on such payment, will be considered only if in the opinion of the Purchasing Manager the review, inspection and processing procedures can be completed as to the specific purchases within the specified time.

It is the intention of the city of Carrollton to make payment on completed orders within thirty (30) days of receiving invoicing unless unusual circumstances arise. Invoices shall be fully documented as to labor, materials and equipment provided.

## **PROVISIONAL CLAUSES**

The city of Carrollton will not enter into any contract where the cost is provisional upon such clauses as are known as "escalator" or "cost-plus" clauses.

## **REJECTION OF RFP'S**

The City reserves the right to reject any or all bids or to waive technicalities at its option when in the best interests of said City.

Bids will be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the City reserves the right to waive any irregularities and to make the award in the best interests of the City.

The City reserves the right to reject any or all bids, and all bids submitted are subject to this reservation. Bids may be rejected, among other reasons, for any of the following specific reasons:

- Bids received after the time limit for receiving bids as stated in the advertisement.
- Proposal containing any irregularities.
- Unbalanced value of any items.

Bidders may be disqualified and their bids not considered, among other reasons, for any of the following specific reasons:

- Reason for believing collusion exists among the Bidders.
- Reasonable grounds for believing that any Bidder is interested in more than one Proposal for the work contemplated.
- The Bidder being interested in any litigation against the City.
- The Bidder being in arrears on any existing contract or having defaulted on a previous contract.
- Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
- Uncompleted work, which in the judgment of the City will prevent or hinder the prompt completion of additional work if awarded.

## **REQUEST FOR NON-CONSIDERATION**

Bids deposited with the City cannot be withdrawn prior to the time set for opening bids. Request for non-consideration of bids must be made in writing to the Purchasing Manager and received by the City prior to the time set for opening bids. After other bids are opened and publicly read, the Proposal for which non-consideration is properly requested may be returned unopened. The Proposal may not be withdrawn after the bids have been opened, and the Bidder, in submitting the same, warrants and guarantees that this bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid will not and cannot be withdrawn because of any mistake committed by the Bidder.

## **SALES TAX**

The total for each bid submitted must include any applicable taxes. Although the City is exempt from most City, State, or Federal taxes, this is not true in all cases. It is suggested that taxes, if any, be separately identified, itemized, and stated on each bid. The City cannot determine for the bidder whether or not the bid is taxable to the City. The bidder through the bidder's attorney or tax consultant must make such determination. Bills submitted for taxes after the bids are awarded will not be honored.

## **TAX EXEMPT PURCHASING BY VENDOR**

Texas Tax Code 151.311, which is copied below, allows a vendor to purchase many items exempt from state and local sales taxes in the performance of their contract with the city. Vendors who respond to this Request For Proposal will be expected to take advantage of this tax exemption as allowed by state law. Vendors should take the initiative to verify the tax exempt details with the State of Texas Comptroller's Office, but here are a few stipulations from them:

- All products purchased to perform on the contract must be used on the contract. For example, a vendor cannot purchase 100 pieces of lumber for our contract and use some of them for another taxable client.
- The rental of items such as scaffolding, barricades, or rental equipment is not exempt from taxes.

It is our understanding that vendors can provide their suppliers with a completed Texas Sales And Use Resale Certificate (<http://www.window.state.tx.us/taxinfo/taxforms/01-3392.pdf>) to receive this exemption. You may contact the State of Texas Comptroller's Office for details, and their contact information can be found at <http://www.window.state.tx.us/contact.html>. Vendors who respond to this RFP are expected to pass this tax savings along to the city. No exempt state and local sales taxes will be paid to the winning contractor.

### **§ 151.311. TAXABLE ITEMS INCORPORATED INTO OR USED FOR IMPROVEMENT OF REALTY OF AN EXEMPT ENTITY.**

**(a) The purchase of tangible personal property for use in the performance of a contract for an improvement to realty for an organization exempted under Section 151.309 or 151.310 of this code is exempt if the tangible personal property is incorporated into realty in the performance of the contract.**

**(b) The purchase of tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, for use in the performance of a contract for an improvement to realty for an organization exempted under Section 151.309 or 151.310 of this code is exempt if the tangible personal property is:**

- (1) necessary and essential for the performance of the contract; and**
- (2) completely consumed at the job site.**

**(c) The purchase of a taxable service for use in the performance of a contract for an improvement to realty that is performed for an organization exempted under Section 151.309 or 151.310 of this code is exempt if the service is performed at the job site and if:**

- (1) the contract expressly requires the specific service to be provided or purchased by the person performing the contract; or**
- (2) the service is integral to the performance of the contract.**

**(d) For purposes of this section, tangible personal property is completely consumed if after being used once for its intended purpose it is used up or destroyed. Tangible personal property that is rented or leased for use in the performance of the contract cannot be completely consumed for purposes of this section.**

## SPECIAL CONDITIONS

1. **PLEASE NOTE: THE FUNDS FOR THIS PROJECT INVOLVE CDBG/FEDERAL FUNDS. AS SUCH, CERTAIN FEDERAL GUIDELINES MUST BE FOLLOWED. PLEASE SEE PAGES – CDBG REQUIREMENT WHICH INCLUDE THE FOLLOWING DOCUMENTS:**
  - a. NOTICE Bidding Terms and Conditions
  - b. NOTICE CONTRACT SECTION J
  - c. Employee Posters
  - d. General Decision Number
  - e. Contractor’s Guide to Davis Bacon Labor Standards
  - f. Section 3 Brochure
  - g. SAMS HUB BROCHURE
  - h. Suspension Debarment Certification
2. Contractor shall provide all materials and equipment necessary to complete this project. All material is to be delivered by vendor and coordinated with the Parks Department.
3. The RFP will be evaluated based on the following criteria:  
**Creativity in design ..... (40%),**  
**Price ..... (25%)**  
**Quality and Quantity of playground material and structures ..... (35%).**
4. Contractor shall have a minimum of three (3) years experience in supplying a turnkey park playground design and installation.
5. Contractor shall be required to submit a list of three verifiable references. Please use pages in this RFP to submit references.
6. Please include the manufacturer’s warranty information on all materials and equipment used on this project.
7. The format of the RFP must be followed and all requested information must be submitted as indicated; however, the City of Carrollton is receptive to any additional suggestions or designs.
8. The City of Carrollton will not pay costs incurred in the proposal preparation including costs for printing, demonstration, negotiation process, etc. All costs for preparation of the proposal shall be borne by the proposing firm.
9. The proposal should clearly demonstrate how the firm can best satisfy the requirements of the City of Carrollton. The City of Carrollton shall reserve the right to enter into an agreement with the firm with the highest overall grade and who presents the proposal that is most advantageous to the City of Carrollton.
10. All pages of this bid document must be provided in your response. **Please submit two copies (2) copies of your proposal and mark the “ORIGINAL” as such.**

11. These bid specifications will list the general requirements for the playground design. Please include all items in your response or indicate all exceptions.
12. The Crosby Rec Center is located at 1610 E Crosby Road, Carrollton, TX 75006. Vendors are encouraged to visit the site or use Google Earth to view this location. The playground will be installed on the northeast corner of the main building, south of the parking lot.
13. **The City is requesting a Bid Bond and a Payment Bond, please factor those costs into your RFP response. The city will require that you use the standard city forms for both bonds, and copies are included in this bid package.**
14. All responders must submit a **Bid Bond** on the city form based on **5%** of your bid total
15. **A Payment Bond** (in the full amount of your winning award) and insurances will be required of the winner. Please factor these costs into your proposal. A copy of a Payment Bond is provided and the insurance minimums are included in this bid.
16. Please sign the Contract Agreement and submit with your proposal. Please submit two copies with the ORIGINAL bid proposal.
17. **Insurance Requirement Affidavit should be submitted as part of the proposal. (Requirements are listed on page 39). This form is simply a confirmation from your insurance company that you will be able to provide the insurance requirements should you be the chosen company.**
18. **Insurance Certificate must be submitted and issued with the City listed as the certificate holder within 10 days of notice of award. See Section 28 of the general terms and conditions for detailed insurance requirements.**
19. **By signing the proposal sheet, the representative has read and understands all plans, specifications, and general design standards involved with this project.**
20. **The anticipated budget for this work is approximately \$75,000.**

**CONTRACTOR’S BID BOND**

KNOW ALL MEN BY THESE PRESENTS,

That we , \_\_\_\_\_ Principal, and \_\_\_\_\_  
\_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_, and authorized to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the City of Carrollton, owner, in the sum of \_\_\_\_\_ 5% of amount bid \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for the payment of which sum we will bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit a bid to Owner on a contract for

**18-032 RFP FOR CROSBY REC PLAYGROUND**

NOW, THEREFORE, if the Owner shall accept the bond of the Principal and the Principal shall enter into a contract with the Owner in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, then this obligation shall be null and void, otherwise to remain in full force and effect and the amount hereof shall be paid to and retained by Owner as liquidated damages for Principal’s failure to do so.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representatives of the Principal and the Surety.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

Title: \_\_\_\_\_

**(NAME OF SURETY)**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**PAYMENT BOND**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto the City of Carrollton (Owner), in the penal sum of \_\_\_\_\_ for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

**WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_ 2018, for CROSBY REC CENTER PLAYGROUND which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal and its subcontractors shall well and faithfully make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supply labor or materials in the prosecution of the work under the contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as currently amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive

notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder. The surety company must have a minimum rating of A VII.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The name and address of the Resident Agent of Surety is: \_\_\_\_\_

\_\_\_\_\_

## INSURANCE REQUIREMENTS – CONSTRUCTION

1. **Insurance Certificate must be submitted and issued with the City listed as the certificate holder within 10 days of notice of award.**

### TAKEN DIRECTLY FROM CONTRACT/SPECIFICATIONS

#### INSURANCE:

The Contractor shall secure and maintain throughout the duration of this contract insurance of such types and in such amount as may be necessary to protect himself and the interest of the Owner against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the Owner but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the Owner prior to starting any construction work on this contract. The certificates shall state that 30 days advance written notice will be given to the Owner before any policy covered thereby is changed or canceled.

The Contractor shall comply with all Federal, State and local laws and ordinances relating to Social Security, Unemployment Insurance, Pensions, etc.

#### WORKERS COMPENSATION INSURANCE COVERAGE:

- (A) Definitions:

**Certificate of coverage ("certificate")** - copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

**Duration of the project** - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. **Persons providing services on the project ("subcontractor" in §406.096)** - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees

of the contractor providing services on the project, for the duration of the project.

- (C) **The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.**
- (D) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- (E) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (F) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (G) **The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.**
- (H) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (I) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on

the project; and

- (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

COMPREHENSIVE AUTOMOBILE LIABILITY:

This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles licensed for highway use, whether they are **owned, non-owned, or hired**.

The liability limits shall not be less than:

|                 |                           |
|-----------------|---------------------------|
| Bodily injury   | .....\$250,000/person     |
|                 | .....\$500,000/occurrence |
| Property Damage | ...\$100,000/occurrence   |

**The insurance shall be of the occurrence type and name the Owner as an additional insured.**

COMPREHENSIVE GENERAL LIABILITY:

This insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act of omission of the Contractor or his agents, employees, or

subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under the article entitled DEFENSE OF SUITS.

To the extent that the Contractor's work, or work under his direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property. The liability limits shall not be less than:

|                 |                           |
|-----------------|---------------------------|
| Bodily Injury   | .....\$250,000/person     |
|                 | .....\$500,000/occurrence |
| Property Damage | ...\$500,000/occurrence   |
|                 | ...\$500,000/aggregate    |

The insurance shall be of the occurrence type and name the Owner as an additional insured.

**INSTALLATION FLOATER: (REQUIRED)**

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverages designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

**INSTALLATION FLOATER :( REQUIRED)**

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverages designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

THIS FORM MUST BE TURNED IN WITH YOUR BID

**INSURANCE REQUIREMENT AFFIDAVIT**

**TO BE COMPLETED BY APPROPRIATE INSURANCE AGENT.**

I, the undersigned agent, certify that the insurance requirements contained in this bid document have been reviewed by me with the vendor identified below. If the vendor identified below is awarded this contract by the City of Carrollton, I will be able, within ten (10) working days after being notified of such award, to furnish a valid insurance certificate to the CITY meeting all of the requirements contained in this bid.

\_\_\_\_\_  
Agent Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Name of Insurance Carrier

\_\_\_\_\_  
Address of Agency

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Fax #

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Vendor / Contractor Name

**Acknowledgement**

Subscribed and Sworn before me by the above named \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

(seal)

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

**NOTICE TO THE AGENT**

If this time requirement is not met, the City has the right to declare this vendor non-responsible and award the contract the next lowest/responsible bidder meeting the specifications. If you have any questions concerning these requirements, please contact, City of Carrollton Purchasing at 972-466-3115.

**REQUEST FOR PROPOSAL 18-032**  
**SCOPE OF WORK**  
**CROSBY REC CENTER PLAYGROUND**

Request for sealed, written proposals will be received by the City of Carrollton, Texas, for a general contractor to design, supply and install playground equipment and safety surfacing for Crosby Rec Center Playground, to include all labor, materials, equipment and supplies.

The bid deadline is to the Purchasing Department as indicated on page #2. The proposals will be opened and tabulated at that time, and proposal summaries will be posted to the city's website later that afternoon instead of vendors waiting for the bid opening. Proposals must be delivered to Patty Helms at, Carrollton City Hall, 2<sup>nd</sup> floor, 1945 E. Jackson Rd., Carrollton, TX 75006.

The City of Carrollton reserves the right to change dates that the proposal will be considered, reject any or all proposals, waive all formalities and to accept that deemed most advantageous for value received.

The City will evaluate the proposals and call in as many vendors as necessary for interviews and to fine tune the proposals and drawings.

Crosby Rec Center is located at 1610 E Crosby Road, Carrollton, TX 75006. This playground area will be funded using CDBG dollars so all grant rules must be followed. The budget is not to exceed \$75,000.

## GENERAL PLAYGROUND SPECIFICATIONS

1. It is the intention of the City of Carrollton to provide a complete playground system, including play apparatus, weed barrier, and safety surfacing. The Contractor shall provide all necessary design materials, incidentals, methods and labor necessary to furnish a complete play area, ready for use.
2. The size and configuration of the area where the playground is to be installed is an area that will be relatively flat, with no obstructions that is approx. 1,600 sq. ft.
3. Proposals may be submitted to include the specifications below. The Playground equipment should only be suitable for 2-5 years old.
4. All equipment shall be placed inside a bordered safety surfaced area. The safety surface shall consist of a synthetic turf material. Safety surfacing shall meet fall requirements for height of equipment and recommended thickness of fall surfacing or alternative approved playground surface material.
5. Design shall include age appropriate signage.
6. All designs shall be documented to meet or exceed current CPSC guidelines, ASTM F 1487-95, and ADA regulations. Playgrounds that have a high play value, while incorporating safety, low maintenance and certified by IPEMA, will be given preference.
7. Rotationally molded plastic must have a 15yr warranty and no cost shipping and installation. Warranty must also cover against fading during the 15yr warranty period or list alternative clearly.
8. Rotationally molded plastic must be a minimum of .25" in thickness and made from compound blended plastics or note if different.
9. All hardware must be stainless steel
10. The bidder shall include factory warranties and product liability information on all components.
11. Submit a minimum of three (3) references where similar equipment has been used and installed.
12. This project has a completion date of sixty (60) calendar days after notice to proceed.
13. Installers must be certified factory trained and insured.
14. Bidder shall be responsible for inspecting the site and for reading and being thoroughly familiar with the contract and proposal documents. The failure or omission of any bidder to do any of the foregoing shall in no way relieve any Contractor from any obligation with respect to its proposal. All proposals shall be submitted on the form provided and placed in a sealed envelope, plainly marked with proposal number, **RFP# 18-032 CROSBY REC CENTER PLAYGROUND** and shall bear on the outside the vendor's name and address.
15. All cost associated with responding to this RFP shall be borne by the bidder. Proposals shall be original and hard copy. Facsimile proposals shall not be accepted. Proposals shall be filled out in ink

or typewritten. Initial all corrections. Failure to provide required data or failure to complete the RFP form(s) may be grounds for rejection.

16. The City is tax exempt from sales taxes, and a tax exempt certificate will be provided to the winning vendor. The vendor is legally allowed to purchase all components necessary to satisfy this contract tax exempt also, and a statement of this is included.

17. If you have any exceptions to the specifications listed above, they must be detailed below. The City will assume that your company will be able to meet all of the minimum specifications listed in this document unless you detail them below:

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18. Page 71 of the “suspension Debarment Certification” is required. This form must be filled out by the main contractors and all subcontractors to be accepted.

# RFP 18-032 CROSBY REC CENTER PLAYGROUND PROPOSAL SHEET

Proposals are to include all of the playground components and specifications listed in these bid specifications and must also include the following:

- Insurances as stated (of winning contractor)
- Bid Bond (5% of your bid)
- Payment bond (of winning contractor)
- Conflict of Interest Form
- 1295 Form (of winning contractor)
- Labor except as specified. Please detail in your response how you propose to perform the labor and coordination to install the new components.
- Design/Drawing of proposed playground
- References
- Timeframe to complete project from receipt of notice to proceed
- Warranty details on all components
- Submit Page 71 of the “suspension Debarment Certification”. (This form must be filled out by the main contractors and all subcontractors to be accepted.)

## **COST TO PROVIDE PLAYGROUND AS SPECIFIED:**

\$ \_\_\_\_\_

All vendors are to attach to this bid document a complete list of components to be provided or recommended plus all warranty information Any and all exceptions or substitutions to the specified items must be noted in your response. If none are noted, the city will assume that your company will provide all components detailed.

The city is interested in knowing what other playground items are available, so please detail in your response a list of these items plus literature. Also include fact/product sheets, availability, labor costs to install, and price. Vendors are also required to check with the manufacturer to determine the lead time to obtain all of the items.

## **TIME TO COMPLETE PROJECT AFTER NOTICE TO PROCEED:**

\_\_\_\_\_

**GENERAL CONDITIONS FOR  
CONSTRUCTION CONTRACT**

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**CITY OF CARROLLTON**

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## GENERAL CONDITIONS

### 1. CONTRACT DOCUMENTS:

It is understood and agreed that the Advertisement for Bids, Instructions to Bidders, Proposal, Proposal Data, Contract Agreement, Owner's Purchase Order, Owner's Resolution, Performance Bond, Payment Bond, General Conditions, Special Conditions, Specifications, Council of Governments Standard Specifications for Public Works, 1983 Edition as amended, Drawings, Addenda, and Change Orders issued by the Owner, specifications, and engineering data furnished by the Contractor and accepted by the Owner, are contract documents. Additionally, any other written instruments, correspondence, etc., bound in the volume of the contract documents at the time of execution by the Owner and Contractor shall be "contract documents" whether specifically designated as such or otherwise.

It is the intent of the contract documents that they be read as a whole and that all portions of the contract be interpreted so as to give meaning to their terms. In the event of any conflict in the contract documents, handwritten provisions shall prevail over typewritten and typewritten provisions shall prevail over preprinted matter. Additionally, the following order of precedence shall govern among the various contract documents, with the first listed having precedence over any documents listed thereafter.

- Scope of Work
- Contract Agreement
- Owners Resolution
- Addenda to Contract Conditions and Specifications "and Plans"
- Special Conditions
- General Conditions
- Technical Specifications
- Contract Conditions
- Contract Drawings
- All other Contract Documents
- General Design Standards
- North Central Texas Council of Governments Standard Specifications for Public Works

The City reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work, and where required, shall properly connect and coordinate his work with theirs.

### 1.1 NO PREJUDICE AGAINST OWNER:

It is understood and agreed by Contractor that Owner has independently prepared most of the Contract Documents and Contractor agrees that, notwithstanding any doctrine of law to the contrary, no presumption and/or prejudice against Owner shall be presumed against Owner (nor construed in favor of Contractor) by any court of competent jurisdiction in its interpretation of the Contract Documents.

### 2. DEFINITIONS:

Words, phrases, or other expressions used in these contract documents shall have meanings as follows:

- a. "Contract", "contract", or "contract documents" shall include the items enumerated above under CONTRACT DOCUMENTS.

- b. "Owner", "Agency", or "Inspector" shall mean the City of Carrollton, named and designated in the Contract Agreement. All notices, letters, and other communication directed to the Owner shall be addressed and delivered to:

City of Carrollton  
P.O. Box 110535  
Carrollton, Texas 75011-0535

Attn: Purchasing Department

- c. "Contractor" shall mean the corporation, company, partnership, firm, or individual named and designated in the Contract Agreement, who has entered into this contract for the performance of the work covered thereby, and its, his, or their duly authorized representatives or its successors to the contract.
- d. "Subcontractor" shall mean and refer only to a corporation, partnership, or individual having a direct contract with the Contractor for performing work covered by these contract documents, or its successors to the contract.
- e. "Date of contract", or equivalent words, shall mean the date written on the Owner's Resolution, or the Owner's Purchase Order if a Resolution is not required, which shall also be the date written in the first paragraph of the Contract Agreement.
- f. "Day" or "days", unless herein otherwise expressly defined, shall mean a calendar day or days of 24 hours each.
- g. "The work" shall mean the equipment, supplies, materials, labor, and services to be furnished under the contract and the carrying out of all obligations imposed by the contract documents.
- h. "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner or Engineer as a basis for proposals, (b) supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the contract drawings and specifications, (c) drawings submitted by the successful bidder with his proposal, provided such drawings are acceptable to the Owner, (d) drawings furnished by the Owner to the Contractor during the progress of the work, and (e) engineering data and drawings submitted by the Contractor during the progress of work.
- i. Whenever in these contract documents the words "as ordered", "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it shall be understood that the order, direction, requirements, permission, or allowance of the Owner is intended only to the extent of judging compliance with the terms of the contract; none of these terms shall imply that the Owner has any authority or responsibility for supervision of the Contractor's forces or construction operations, such supervision and the sole responsibility therefor being strictly reserved for the Contractor.
- j. Similarly the words "approved", "reasonable", "suitable", "acceptable", "proper", "satisfactory", or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgement of the Owner, to the extent provided in "i" above.
- k. Whenever in these contract documents the expression "it is understood and agreed" or an expression of like import is used, such expression shall mean the mutual understanding and

agreement of the parties executing the Contract Agreement.

1. "Official Acceptance" shall mean the Owner's written acceptance of all work performed under this Contract.

3. CONTRACTOR'S PRELIMINARY OBLIGATION:

It is the responsibility of the bidder to deliver his proposal at the proper time and to the proper place. The proposal shall be delivered in a manila envelope with the appropriate job name on the outside. The mere fact that a proposal was dispatched by mail, express, or otherwise, will not be considered. The bidder must have his proposal in the hands of the proper official before closing time. Bids received after the advertised closing time will not be considered and will be returned unopened.

The Contractor, as successful bidder, shall furnish the required payment, performance and maintenance bond each in the amount of 100% of the contract price, a valid power-of-attorney proving the agent has the authority to execute the bonds for the surety, and certificates of insurance and an executed contract, within (10) days of notice of award. A certified copy of the Board Resolution authorizing said persons to sign and bind the firm must be included with each copy of the Contract. If such Contractor fails to enter into a contract or execute bonds as herein provided, the City may annul the award and award the contract to the bidder whose proposal was next most acceptable and the Contractor shall execute contract and bond as herein provided. The bidder to whom the first award was made shall then forfeit the bid security submitted with his proposal. The surety company used by the contractor must have a minimum rating of A VII.

The official form of contract will be executed in seven copies. Two executed copies of the contract will be returned to the Contractor after the contracts and bonds have been approved and executed by the Owner. In addition to the two executed copies of the official contract, the Contractor will be furnished without charge five "field copies" of the plans and specifications and contract documents. Additional sets may be obtained from the engineer at the cost of reproduction.

These additional plans are to be stamped approved by the Owner before they can be used on the project.

4. LEGAL ADDRESSES:

All notices, letters, and other communications to the Contractor will be mailed or delivered to either the contractor's business address listed in the Proposal or the contractor's office in the vicinity of the work, with delivery to either of these addresses being deemed as delivery to the Contractor. The addresses of the Owner appearing on page 3 are hereby designated as the place to which all notices, letters, and other communication to the Owner shall be mailed or delivered. Either party may change his address at any time by an instrument in writing delivered to the Owner and to the other party.

5. SCOPE AND INTENT OF CONTRACT DOCUMENTS:

The specifications and drawings are intended to supplement but not necessarily duplicate each other. Any work exhibited in the one and not the other shall be executed as if it had been set forth in both, so that the work will be constructed according to the complete design as determined by the Owner.

Should anything necessary for a clear understanding of the work be omitted from the specifications and drawings, or should the requirements appear to be in conflict, the Contractor shall secure written instructions from the Owner before proceeding with the work affected thereby. It is understood and agreed that the work shall be performed accordingly to the true intent of the contract documents.

Owner disclaims to Contractor any express or implied warranties that the specifications and drawings included in the Contract Documents are accurate and sufficient for purpose of completing the work according to the terms of this Agreement.

6. INDEPENDENT CONTRACTOR:

The relationship of the Contractor to the Owner shall be that of an independent Contractor. Owner and Contractor agree that the negotiation, preparation and execution of the Contract Documents were negotiated, prepared, and executed as part of an arms-length transaction, and that no duty of good faith and fair dealing exists between Owner and Contractor, now, in the future, nor at any time in the past. The Owner shall not have the right to control the day to day activities of how the Contractor performs the work, being interested only in the results to be achieved.

7. ASSIGNMENT AND SUBCONTRACTING:

The Contractor shall not assign or subcontract the work or any part thereof, without the previous written consent of the Owner, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the Owner has been obtained. No right under this contract, nor claim for any money due or to become due hereunder shall be asserted against the Owner, or person acting for the Owner, by reason of any so called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the Owner. In case the Contractor is permitted to assign moneys due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of the work.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the Contractor upon notice from the Owner. The Contractor shall be as of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Owner.

It is the intent of these specifications that the Contractor shall perform the majority of the work with his own forces and under the management of his own organization. Only subcontractors who have been listed in the proposal and who are accepted by the Owner as provided in the General Conditions may subcontract specific portions of the work. All subcontractors shall be directly responsible to the Contractor and shall be under his general supervision. All work performed under subcontracts shall be subject to the same contract provisions as the work performed by the contractor's own forces.

This Contract is considered personal between the Contractor and Owner therefore, any sale of more than 50% ownership of Contractor shall be considered as an assignment.

8. ORAL STATEMENTS:

It is understood and agreed that the written terms and provisions of this agreement shall supersede all oral statements of representatives of the Owner, and oral statements shall not be effective or be construed as being a part of the contract.

9. REFERENCE STANDARDS AND LAWS AND REGULATIONS:

Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative standard adopted and published at the date of taking bids, unless specifically stated otherwise.

The Contractor shall keep itself fully informed of, and shall observe and comply with, all laws, ordinances, and regulations which, in any manner, affect those engaged or employed on any work, or the materials and equipment used in any work or in any way affect the performance of any work, and of all orders and decrees of bodies or tribunals having jurisdiction or authority over work performed under the contract. If any discrepancy or inconsistency should be discovered between the contract and any such law, ordinance, regulation, order or decree, the Contractor shall immediately report the same in writing to the Owner. The Contractor shall be responsible for the compliance with the above provisions by subcontractors of all tiers.

Except as otherwise specified, the Contractor shall procure any pay for all permits and inspections and shall furnish any bonds, security or deposits required to permit performance of its work hereunder.

- (a) OSHA: all work and job site conditions shall, at all times, adhere to the requirements of the latest provisions of the Occupational Safety and Health Act.
- (b) REQUIREMENTS AND CODES: Wherever references are made in the contract to requirements or codes in accordance with which work is to be performed or tested, the addition or revision of the requirements or codes current on the date of this contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such requirements or codes is solely for technical information.

This contract shall be governed by the laws of the State of Texas and by such federal laws as may be applicable.

The parties agree that all claims, disputes, and other matters in question between the Contractor and the Owner arising out of or pertaining to the contract documents or the breach thereof, shall, except as otherwise expressly provided, be decided solely in the Courts of the State of Texas, in the County of Dallas. Interest, if any, allowable on the claims of either party shall be at the current rate for judgments in the Courts of the State of Texas.

10. NO WAIVER OF RIGHTS:

Neither the inspection by the Owner or any of their officials, employees, or agents, nor any order by the Owner for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the Owner, nor any extension of time, nor any possession taken by the Owner or its employees, nor any action of the Owner shall operate as a waiver of any provision of this contract, or of any power herein reserved to the Owner, or of any right to damages herein, provided nor shall any waiver of any breach in this contract be held to be a waiver of any other or subsequent breach.

11. CONTRACTOR'S SUPERINTENDENT AND EMPLOYEES:

The Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such work.

The Contractor shall act as an independent contractor maintaining complete control over its employees and all of its subcontractors. The Contractor shall perform all work in an orderly and workmanlike manner, enforce strict discipline and order among its employees and assure strict discipline and order by its subcontractors.

Before starting work, the Contractor shall designate a competent, authorized representative to represent and act with full authority for the contract and shall inform the Owner in writing of the name, address, telephone number (day and night) of such representative, and of any change in such designation. This

representative shall have authority to make binding and enforceable decisions in the name of the Contractor and to accept service of all notices which the Owner desires to serve or which are required by this contract to be served on the Contractor. As an alternate, such written notices may be mailed directly to the address of that party shown on the face of the Contract Agreement form. Such representative shall be present or be duly represented at the site of work at all times when work is actually in progress and, during period when work is suspended, arrangements acceptable to the Owner shall be made for any emergency work which may be required. The Contractor's authorized representative shall be supported by competent assistants, as necessary, and the authorized representative and its assistants shall be satisfactory to the Owner. All requirements, instructions, and other communications given to the Contractor's authorized representative by the Owner shall be as binding as if given to the Contractor.

The Contractor shall employ only fully experienced and properly qualified persons to perform any work. The Contractor shall be responsible for maintaining satisfactory conduct of its employees. The Contractor's site representative shall stay on the project until final completion of the work in accordance with the contract documents.

12. ENGINEERING INSPECTION:

The Owner may appoint such inspectors, as the Owner deems proper to inspect the materials furnished and the work performed for compliance with the drawings and specifications. The Contractor shall furnish all reasonable assistance required by the Owner, or inspectors, for the proper inspection of the work. Should the Contractor object to any interpretation of the contract by any inspector, the Contractor may make written appeal to the Owner for a decision, but the Owner's decision shall be final.

Inspectors shall have the authority to reject work, which is unsatisfactory, faulty, or defective or does not conform to the requirements of the drawings and specifications. Inspection shall not relieve the Contractor from any obligation to construct the work strictly in accordance with the drawings and specifications. Work not so constructed shall be removed and replaced by the Contractor at his own expense.

13. RIGHT OF OWNER TO TERMINATE CONTRACT:

If the work to be done under this contract is abandoned by the Contractor; or if this contract is assigned by him without the written consent of the Owner; or if the Contractor is adjudged bankrupt, or files for voluntary bankruptcy; or if a general assignment of his assets is made for the benefit of his creditors; or if a receiver is appointed for the Contractor of any of his property or if at any time in writing to the Owner determines that the performance of the work under this contract is being unnecessarily delayed, that the Contractor is violating any of the conditions of this contract, or that he is executing the same in bad faith or otherwise not in accordance with the terms of said contract; or if the work is not substantially completed within the time named for its completion or within the time to which such completion date may be extended; then the Owner may serve written notice upon the Contractor and his surety of the Owner's intention to terminate this contract. Unless within five (5) days after the serving of such notice, a satisfactory arrangement is made for continuance, this contract shall terminate. In the event of such termination, the surety shall have the right to take over and complete the work, provided that if the surety does not commence performance within 30 days, the Owner may take over and prosecute the work to completion, by contract or otherwise. The Contractor and his surety shall be liable to the Owner for all excess cost sustained by the Owner by reason of such prosecution and completion. The Owner may take possession of, and utilize in completing the work, all materials, equipment, tools, and plant on the site of the work, including such materials, etc., as may have been placed on the site by or at the direction of the Contractor.

The Owner may, at its option, terminate the performance of the work in accordance with this section, in whole, or from time to time in part, at any time by written notice thereof the Contractor, whether or not

the Contractor is in default. Upon any such termination, Contractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of the Contractor, the Owner shall pay Contractor in accordance with subparagraph (b) below, provided, however, that those provisions of the contract documents which by their very nature survive final acceptance under the contract documents shall remain in full force and effect after such termination.

- (a) Upon receipt of any such notice, the Contractor shall, unless the notice requires otherwise:
  - (1) Immediately discontinue work on the date and to the extent specified in the notice;
  - (2) Place no further order or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of work under the contract that is not terminated;
  - (3) Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the Owner of all order and subcontracts to the extent they relate to the performance of work terminated, or assign to the Owner those orders and subcontracts, and revoke agreements specified in such notice; and
  - (4) Assist the Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by the Owner under the contract.
  
- (b) Upon any such termination, the Owner will pay the Contractor an amount determined in accordance with the following (without duplication of any item):
  - (1) All amounts due and not previously paid to the Contractor for work completed in accordance with the contract prior to such notice, and for work thereafter completed as specified in such notice;
  - (2) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in subparagraph (a) (3) above;
  - (3) The reasonable cost incurred pursuant to subparagraph (a) (4) above;
  - (4) Any other reasonable costs incidental to such termination of work.

The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all work satisfactorily performed by the Contractor.

#### 14. TERMINATION FOR CONVENIENCE:

Owner hereby reserves the right to terminate this Agreement without regard to fault or breach upon written notice to Contractor, effective immediately unless otherwise provided in said notice to Contractor, effective immediately unless otherwise provided in said notice. In the event of such termination, Owner shall pay as the sole amount due to Contractor in connection with the work (i) all sums due for Work performed to date including allowing profit and overhead (except retainage sums shall not be paid prior to thirty (30) days following the date of termination); and (ii) reasonable cost of termination. Such sums will be due and payable on the same conditions as set forth in this Agreement for final payment to the extent applicable. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except for Contractor's obligations to perform corrective and/or warranty work and to indemnify Owner as provided for in this Agreement. It is understood and agreed that no profit, fee or other compensation shall be due or payable for unperformed work. Contractor agrees that each

subcontract and purchase order issued by it will reserve for Contractor the same right of termination provided by this Section 15.1 and Contractor further agrees to require that comparable provisions be included in all lower tier subcontracts and purchase orders.

Upon a determination by any court or body that termination of Contractor, or its successor in interest, was wrongful, such termination will be deemed converted to a termination for convenience and Contractor's remedy for wrongful termination is limited to the recovery of the payments permitted for termination for convenience as set forth above.

The rights and remedies of Owner and Contractor under this Agreement shall be non-exclusive, and shall be in addition to all the other remedies available to such parties at law or in equity, subject, however, in the case of Contractor, to the limitation contained above and other pertinent provisions of this Agreement.

15. EQUAL OPPORTUNITY:

The Contractor is aware of, and is fully informed of, the Contractor's obligations under Executive Order 11246, and, where applicable, shall comply with the requirements of such order and all orders, rules and regulations promulgated thereunder unless exempted therefrom.

Without limitation of the foregoing, the Contractor's attention is directed to 41 CFR Section 60-1.4, and the clause therein entitled "Equal Opportunity Clause" which, by this reference, is incorporated herein.

The Contractor is aware of, and is fully informed of, the Contractor's responsibilities under Executive Order No. 11701, "List of Job Openings for Veterans" and, where applicable, shall comply with the requirements of such order, and all orders, rules and regulations promulgated thereunder unless exempted therefrom.

Without limitation of the foregoing, the Contractor's attention is directed to 41 CFR 60-250 et seq. and the clause therein entitled "Affirmative Action Obligations of the Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era" which, by this reference is incorporated herein.

The Contractor certifies those segregated facilities, including, but not limited to, washrooms, work areas, locker rooms, are not, and will not, be maintained or provided for the Contractor's employees. Where applicable, the Contractor shall obtain similar certification from any of its subcontractors, vendors, or suppliers performing work under this contract.

The Contractor is aware of, and is fully informed of, the Contractor's responsibilities under the Rehabilitation Act of 1973, and, where applicable, shall comply with the provisions of the Act, and the regulations promulgated thereunder unless exempted therefrom.

Without limitation of the foregoing, the Contractor's attention is directed to 41 CFR Section 60-741 and the clause entitled "Affirmative Action Obligations of the Contractors and Subcontractors for Handicapped Workers" which, by this reference, is incorporated herein. Contractor must also comply with the rules and regulations as established by the Americans with Disabilities Act of 1990.

16. BEGINNING, PROGRESS, AND COMPLETION OF THE WORK; LIQUIDATED DAMAGES:

The time of completion is of the essence of this contract. Unless otherwise specified in these contract documents or advised by written order of the Owner, the Contractor shall begin work within 10 days after the date of contract. The work shall be prosecuted to completion in accordance with the schedule provided for below and shall be 100% completed within 30 calendar days from the date of the Notice to Proceed.

The Owner and Contractor, recognizing that calculation of damages caused by Contractor's failure to complete within the contract time are difficult to assess, hereby agree that liquidated damages shall be assessed Contractor at the rate of \$250.00 per calendar day for each day Contractor is late in completing.

It is understood that the foregoing constitutes an agreement as to minimum amount of damages only for failure to complete the work within the specified time. Should the Owner suffer damages over and above the amount specified above for any failure or negligence on the Contractor's part, other than failure to complete the work within the specified time, the Owner may recover such additional amount.

A detailed construction schedule and monthly payment schedule shall be prepared by the Contractor and submitted to the Owner for review within ten (10) days of the effective beginning date of the Contract, or prior to the commencement of construction, whichever occurs first. The schedule shall contain the various activities required to perform the work and the dates the activities will be started and completed in order to complete the work in accordance with the specified schedule requirements. The Contractor is responsible for determining the sequence and time estimates of the detailed construction activities. However, the Owner reserves the right to require the Contractor to modify any portion of the schedule the Owner determines to be impractical or unreasonable; as required to coordinate the Contractor's activities with those of other Contractors, if any, engaged in work for the Owner on the site; to avoid undue interference with the Owner's operations; and to assure completion of the work by the date or dates stipulated. Upon acceptance by the Owner of the Contractor's detailed construction schedule, the Contractor will be responsible for maintaining such schedule.

If at any time the Contractor's work is behind schedule, he shall immediately put into effect definite procedures for getting the work back on schedule. The procedures shall be subject to review and modification by the Owner. The Contractor will not be allowed extra compensation for costs (whether for costs for materials used and/or labor to be paid) incurred by him because of Contractor's accelerated operations required to maintain the schedule.

17 EXTENSION OF TIME FOR DELAY:

In the event the progress of the work is delayed or interrupted by occurrences or events which entitle Contractor to an extension of time pursuant to the terms of this Agreement, then the work completion date shall be extended for a period equal to the length of such delay if within seven (7) days after the commencement of any such delay, contractor delivers to Owner a written notice of such delay stating the nature thereof and within seven (7) days following the expiration of any such delay provides a written request for extension of the work completion date by reason of such delay and such request is approved by Owner, which approval shall not be unreasonably withheld. Failure to deliver any such notice or request within the required period shall constitute an irrevocable waiver of any extension of the previously scheduled work completion date by reason of the cause in respect of which such notice and request were required to make only one such request with respect thereto. No extension of the previously scheduled work completion date (or right on the part of Contractor to secure any such extension) pursuant to this Section shall prejudice any right Owner may have under this Agreement, or otherwise, to terminate this Agreement.

Extension of time shall be Contractor's sole remedy for any such delay (except for Contractor's right to terminate this Agreement pursuant to the terms and provisions hereinafter set forth), unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the work and where to the extent that such acts continue after Contractor's notice to Owner of such interference. Owner's exercise of any of its rights to order changes in the work pursuant to this contract, regardless of the extent of number of such changes, or Owner's exercise of any of its remedies of suspension of the work, or requirement or correction or re-execution of any defective work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the work.

18. HINDRANCES AND DELAYS:

The Contractor expressly agrees that the period of time named in Part 1 of the specifications to complete all work includes allowance for all hindrances and delays incident to the work. The Contractor further agrees that no claims shall be made for hindrances and delays from any cause during the performance of the work, except as specifically provided for in the articles SUSPENSION OF WORK and EXTENSIONS OF TIME in these General Conditions.

18.1 RESEQUENCING OR ACCELERATION:

In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the work to bring the work back on schedule. In the event Contractor determines that the previously scheduled work completion date cannot be met by resequencing the work, then Contractor shall immediately provide to Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the declared new scheduled completion date.

Owner shall additionally be entitled to direct the acceleration or resequencing of the work in order to achieve completion prior to the declared new scheduled completion date and Contractor shall be reimbursed by Owner for the amount of labor overtime actually incurred in respect thereto and shall be entitled to an increase adjustment the contract price to the extent of the labor portion of overtime so incurred.

19. SUSPENSION OF WORK:

The Owner reserves the right to suspend and reinstate execution of the whole or any part of the work without invalidating the provisions of the contract. Orders for suspension or reinstatement of work will be issued by the Owner to the Contractor in writing. The time for completion of the work will be extended for a period equal to the time lost by reason of the suspension.

The Owner will pay extra costs and expenses, which are caused by work suspensions ordered by the Owner, to the Contractor.

20. EXTENSIONS OF TIME:

Should the Contractor be delayed in the final completion of the work by any act or neglect of the Owner, or of any employee of either, or by any other Contractor employed by the Owner, or by strike, fire, regulatory agencies or other cause outside of the control of the Contractor and which, in the opinion of the Owner, could have been neither anticipated nor avoided, then an extension of time sufficient to compensate for the delay, as determined by the Owner, will be granted by the Owner; provided that the Contractor gives the Owner notice in writing within 10 days of the cause of delay in each case and demonstrates that he has used all reasonable means to minimize the delay.

Extensions of time will not be granted for delays caused by unfavorable weather, unsuitable ground conditions, inadequate construction force, or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed.

Failure of Owner furnished equipment and materials to arrive as scheduled, or failure of other construction

Contractors to meet their schedule, shall not be justification for an extension of time, except where such failure causes, in the opinion of the Owner, an actual delay in the Contractor's work.

21. EXTRA OR CHANGE ORDER WORK:

If a modification increases the amount of the work, and the added work or any part thereof is a type and character which can properly and fairly be classified under one or more unit price items of the Proposal listed in the Scope of Work section of this contract, then the added work or part thereof shall be paid for according to the amount actually done and at the applicable unit price. Otherwise, such work shall be paid for as hereinafter provided.

Claims for extra work will not be paid unless the work covered by such claims was authorized in writing by the Owner. The Contractor shall not have the right to prosecute or maintain an action in court to recover for extra work unless the claim is based upon a written order from the Owner. Payments for extra work will be based on agreed lump sums or on agreed unit prices as listed in the Scope of Work section of the contract whenever the Owner and the Contractor agree upon such prices before the extra work is started; otherwise, payments for extra work will be based on actual field cost plus the specified percentage allowance.

For the purpose of determining whether proposed extra work will be authorized, or for determining the payment method for extra work, the Contractor shall submit to the Owner, upon request, detailed cost estimate for proposed extra work. The Change Order Request shall indicate itemized quantities and charges for all elements of direct cost. Charges for the Contractor's subcontractor's extra profit, extra general superintendence, extra field office expense, and extra overheads shall be indicated as a percentage addition to the total estimated net cost. Unless otherwise agreed upon by the Contractor and the Owner, such percentage additions shall be 15 percent for the extra work performed by the Contractor's own forces or 20 percent for extra work performed by a subcontractor.

Further, the Change Order Request shall also include a suitable breakdown by trades and work classifications, Contractor's estimate of the changes in the cost of the work attributable to the changes set forth in such Change Order Request, a proposed adjustment to the scheduled completion date resulting from such Change Order Request, and any proposed adjustments of time and costs related to unchanged work resulting from such Change Order Request. If Owner approves in writing such estimate by Contractor, such Change Order Request and such estimate shall constitute a Change Order, and the cost of the contract price and previously scheduled work completion date shall be adjusted as set forth in such estimate. Change Orders shall not cause any modification to Contractor's fee except as specifically set forth herein, it being understood and agreed that Contractor will receive no fee based on the increased cost of the work resulting from Change Orders unless the new work requested is beyond the scope of the work, and then only to the extent thereof pursuant to the terms of this contract. Contractor shall include in each subcontract a limitation on the amount of profit and overhead, which subcontractors can include in Change Orders, which limitation will be subject to the approval of Owner. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Agreement.

When payment for extra work is based on actual field cost, the Contractor will be paid the actual field cost plus an allowance of 15 percent if the extra work is performed by the Contractor's own forces or 20 percent if the extra work is performed by a subcontractor. The allowance will be paid as full compensation for the Contractor's and subcontractors extra profit, extra general superintendence, extra field office expense, extra overheads, and all other elements of extra cost not defined herein as actual field cost.

The actual field cost shall include only those extra costs for labor and materials expended in direct performance of the extra work. The form in which actual field cost records are kept, the construction

methods, and the type and quantity of equipment used shall be acceptable to the Owner.

Construction equipment which the Contractor has on the job site and which is of a type and size suitable for use in performing the extra work shall be used. The hourly rental charges for equipment shall not exceed one-half of one percent of the latest applicable Associated Equipment Distributors published monthly rental rates and shall apply to only the actual time the equipment is used in performing the extra work.

When extra work requires the use of equipment, which the Contractor does not have on the job site, the Contractor shall obtain the occurrence of the Owner before renting or otherwise acquiring additional equipment. The rental charges for the additional equipment shall not exceed the latest applicable Associated Equipment Distributors published rental rates.

#### 21.1 DECREASED WORK:

If a modification decreases the amount of work to be done, such decrease shall not constitute the basis for a claim for damages or anticipated profits on work affected by such decrease. Where the value of omitted work is not covered by applicable unit prices, the Owner shall determine on an equitable basis the amount of (a) credit due the Owner for contract work not done as a result of an authorized change, (b) allowance to the Contractor for any actual loss incurred in connection with the purchase, delivery, and subsequent disposal of materials or equipment required for use on the work as planned and which could not be used in any part of the work as actually built, and (c) any other adjustment of the contract amount where the method to be used in making such adjustment is not clearly defined in the contract documents.

Unless otherwise agreed upon by the Owner and the Contractor, the credit due the Owner for reductions in the amount of work to be done shall be the estimated field cost of the deleted work plus an overhead allowance of:

Ten percent of the estimated field cost if the work was to have been done by the Contractor's own forces, or;

Fifteen percent of the estimated field cost if the work was to be done by a subcontractor.

Field cost referred to above shall include the category of costs listed as actual field costs, items (a) to (f) inclusive of the article entitled EXTRA WORK.

#### 22. PROTECTION OF WORK AND PROPERTY:

The Contractor shall be responsible for and shall bear any and all risk of loss of, or damage to work in progress, all materials delivered to the site, and all materials, tools, and equipment until completion and final acceptance of the work to be performed under this contract.

The Contractor shall promptly take all precautions which are necessary and adequate against any conditions created during the progress of the Contractor's activities hereunder which involve a risk of bodily harm to persons or a risk of damage to any property. Contractor shall continuously inspect all work, materials and equipment to discover and determine, and shall be solely responsible for discovery, determination and correction of any conditions which involve a risk of bodily harm to persons or damage to property.

The Contractor shall comply with all applicable safety laws, standards, codes and regulations in the jurisdiction where the work is being performed specifically but without limiting the generality of the foregoing and regardless of any exemptions provided by law, with all rules, regulations and standards

adopted pursuant to the Occupational Safety and Health Act of 1970.

The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interface with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. The Contractor will protect from damage all existing improvements, utilities, roads, and bridges at or near the site of work and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. Under no circumstances will county or township roads and bridges be subject to greater than normal highway truck loadings.

The Contractor shall provide and maintain such temporary work as is required for the protection of the public and those employed in or about the work site, including all signs, guards, barricades, night lights and any other temporary protection as may be necessary. Contractor shall provide and maintain such temporary work as is required for protection of finished work, including building paper, boxing, planking, protective coating, and such other protection as may be deemed necessary by the Owner. All such work shall be returned to original condition by the Contractor on completion of the contract.

Whenever necessary to maintain proper temperatures for performance of work, or to protect or to close in work in place, Contractor shall provide and maintain temporary enclosures as directed by the Owner for all openings or exterior surfaces that are not enclosed with finishing materials.

The Contractor shall protect all the work including buildings, structures, equipment, excavations, trenches, etc. from water damage including damage by rainwater, ground water, backing-up of drains, downspouts of sewers and shall construct and maintain all necessary drainage and do all pumping required to protect or to perform the work. Contractor shall provide protection to any equipment in place, as required to prevent damage by moisture. Contractor, in general, shall at all times carefully protect the work, materials, and equipment against damage from the weather, and comply with the directions of the Owner in order to avoid any adverse effect on the project from weather conditions.

The Contractor assumes all liability for its failure to comply with the provisions of this Article. The Contractor shall include this Article in its entirety in all subcontracts for any work at the project site.

Upon the failure of the Contractor or its subcontractors to comply with any of the requirements of the Article, the Owner shall have the authority to stop any operations of the Contractor or its subcontractors affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by the Contractor or its subcontractors.

23. SAFETY:

The Contractor shall at all times conduct all operations under the Contractor in a manner to avoid the risk of bodily harm to persons or risk of damage to any property. The Contractor shall promptly take all precautions, which are necessary and adequate against any conditions, which involve a risk of bodily harm to persons or a risk of damage to any property. The Contractor shall continuously inspect all work, materials and equipment to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such conditions. The Contractor shall designate an employee as safety supervisor who is acceptable to the Owner.

The Contractor shall comply with all applicable laws, regulations and standards. The Contractor shall coordinate with other Contractors and subcontractors on safety matters and shall promptly comply with

any specific safety directions given to the Contractor by the Owner.

The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazard, promulgating safety regulations and notifying the Owner and users of adjacent properties and utilities.

The Contractor shall maintain a Safety Program with detail commensurate with the work to be performed. Such review shall not relieve the Contractor of its responsibility for safety, nor shall it be construed as limiting in any manner the Contractor's obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions at the site.

The Contractor shall maintain accurate accident and injury reports.

The Contractor shall hold regular scheduled meetings to instruct its personnel on safety practices. The Contractor shall furnish safety equipment and enforce the use of such equipment by its employees.

All equipment furnished and installed on this project shall be manufactured and installed in accordance with the applicable parts of the Williams-Steiger Occupational Safety and Health Act of 1970, and its subsequent amendments and revisions. All work shall be performed in accordance with the regulations and requirements of the above noted Act, revisions and amendments.

### **EXCAVATION SAFETY PROCEDURE**

In a municipality or in the extraterritorial jurisdiction of a municipality as provided by the Municipal Annexation (Chapter 43) Texas Local Government Code, on construction projects in which excavation will exceed a depth of five feet, the bid document and the contract must include detailed plans and specifications for excavation safety systems.

Prior to execution of a contract the Contractor will be required to submit an excavation safety plan for the project. This excavation safety plan must be designed and sealed by a professional engineer registered in the State of Texas with professional experience in soil mechanics. The Contractor is responsible for obtaining borings and soil analysis as required for plan design. The excavation safety plan shall be designed in conformance with Occupational Safety and Health Administration (OSHA) Standards and Regulations.

After review of the excavation safety plan, the City Engineer will forward the reviewed plan to the appropriate city construction division for use in inspection. Plans for construction will not be released by the City Engineer until this plan is reviewed. Changes in the excavation safety plan after initiation of construction may not be cause for extension of time or change order, and will require the same review process. Contractor accepts sole responsibility for compliance with all applicable safety requirements. The review is only for general conformance with OSHA Safety Standards. Release of the excavation safety plan by the City Engineer does not relieve Contractor from any property damage or bodily injury (including death) that arises from use of the excavation safety plan, from Contractor's negligence in performance of contract work, or from city's failure to note exceptions to the excavation plan. The safety plan shall remain the sole responsibility and liability of the Contractor. A separate pay item for an excavation and support system shall be included in the bid documents.

Contractors have three ways to meet OSHA standards for excavation safety. They are as follows:

1. Minimum angle of repose for sloping of the sides of excavations.
2. Utilization of trench box.
3. Shoring, sheeting and bracing methods.

Contractors electing to utilize the minimum angle of repose must submit:

1. Soil classification according to the unified soil classification system including water content and plasticity indexes, and a minimum angle of slope excavation.
2. A detailed plan of the excavation area and the impact on existing right-of-way and infrastructure.
3. Waiver of claim for delay of cost.

Contractors electing to utilize a trench box must submit:

1. Physical dimensions, materials, position in the trench, expected loads, and the strength of the box.
2. Waiver of claim for delay cost.

Contractors electing to utilize shoring, sheeting and bracing must submit:

1. Dimensions and materials of all uprights, stringers, crossbracing and spacing required to meet OSHA requirements.
2. Waiver of claim for delay cost.

24. TAXES, PERMITS AND LICENSES:

The Contractor shall obtain and pay for all licenses, permits, and inspections required for the work.

The Contractor shall pay all appropriate sales taxes, excluding materials permanently retained by the City of Carrollton franchise taxes, income taxes, gross receipts taxes, and other business or occupation taxes imposed upon the Contractor.

25. PATENTS:

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment, or processes used in the work, shall be included in the contract amount. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he shall be liable for any damages or claims for patent infringements. The Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the Owner for alleged infringement of any patents involved in the work and, in case of an award of damages, the Contractor shall pay such award. Final payment to the Contractor by the Owner will not be made while any such suit or claim remains unsettled.

In the event the Contractor is found to have infringed a patent, the Contractor shall either replace the part

or process with a non-infringing part or process approved by the Owner, or secure the right to use the infringing part or process. Either choice shall be at the Contractor's expense.

26. MATERIALS AND EQUIPMENT:

Unless specifically provided otherwise in each case, all materials and equipment furnished for permanent installation in the work shall conform to applicable standard specifications and shall be new, unused, and undamaged when installed or otherwise incorporated in the work. No such material or equipment shall be used by the Contractor for any purpose other than that intended or specified, unless such use is specifically authorized by the Owner in each case.

All required tests in connection with acceptance of source of materials shall be made at the Contractor's expense by a properly equipped laboratory of established reputation whose work and testing facilities are acceptable to the Owner. Any change in origin or method of reparation or manufacture of a material be routinely tested will require new tests. Reports of all tests shall be furnished to the Owner in as many copies as required.

27. GUARANTEE:

Contractor shall guarantee that all products are in accordance with the manufacture's guarantees, warranties, or Policies. Any replacement of defective material or materials will be made in accordance with such guarantee or warranty policies but, in any case, responsibility ends with the replacement of the defective part or parts, and no responsibility will be assumed for unauthorized repair or replacement of said equipment. Nor any expense will be incurred due to failure of said equipment excepting replacement of its defective part or parts by the manufacturer and in accordance with said manufacturers policies.

Contractors warranty against defects in material and workmanship shall extend two years from the date of final payment.

28. INSURANCE:

The Contractor shall secure and maintain throughout the duration of this contract insurance of such types and in such amount as may be necessary to protect himself and the interest of the Owner against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the Owner but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the Owner prior to starting any construction work on this contract. The certificates shall state that 30 days advance written notice will be given to the Owner before any policy covered thereby is changed or canceled.

The Contractor shall comply with all Federal, State and local laws and ordinances relating to Social Security, Unemployment Insurance, Pensions, etc.

28.1 WORKERS COMPENSATION INSURANCE COVERAGE:

(A) Definitions:

**Certificate of coverage ("certificate")** - copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

**Duration of the project** - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. **Persons providing services on the project ("subcontractor" in §406.096)** - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(B) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

(C) **The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.**

(D) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

(E) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(F) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(G) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(H) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- (I) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

28.2 COMPREHENSIVE AUTOMOBILE LIABILITY:

This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles licensed for highway use, whether they are owned, nonowned, or hired.

The liability limits shall not be less than:

|                 |                           |
|-----------------|---------------------------|
| Bodily injury   | .....\$250,000/person     |
|                 | .....\$500,000/occurrence |
| Property Damage | ...\$100,000/occurrence   |

The insurance shall be of the occurrence type and name the Owner as an additional insured.

28.3 COMPREHENSIVE GENERAL LIABILITY:

This insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act of omission of the Contractor or his agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under the article entitled DEFENSE OF SUITS.

To the extent that the Contractor's work, or work under his direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property. The liability limits shall not be less than:

|                 |                           |
|-----------------|---------------------------|
| Bodily Injury   | .....\$250,000/person     |
|                 | .....\$500,000/occurrence |
| Property Damage | ...\$500,000/occurrence   |
|                 | ...\$500,000/aggregate    |

The insurance shall be of the occurrence type and name the Owner as an additional insured.

28.4 **BUILDER'S RISK: (REQUIRED)**

This insurance shall be written in completed value form and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

28.5 **INSTALLATION FLOATER :( REQUIRED)**

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverages designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

29. **DEFENSE OF SUITS:**

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, materialmen, or suppliers the Contractor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgements, or decrees arising out of such action.

30. **PATENT INDEMNITY:**

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process, or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner.

31. **INDEMNITY AND RELEASE:**

The Contractor is solely responsible for and shall defend, indemnify, and hold Owner (or any of Owner's representatives or employees), free and harmless from and against any and all claims, liabilities, demands, losses, damages, costs or expense to all persons (including but not limited to reasonable attorneys' fees) arising out of resulting from or occurring in connection with the performance of the work that is (i) attributable to any bodily or personal injury, sickness, diseases or death of any person or any damage or injury to or destruction of real or personal property (other than the work itself) including the loss of use thereof, and (ii) caused in whole or in part by any negligent, strict liability or other act or omission of contractor, any subcontractor or supplier, their respective agents or employees or any other party for whom any of them may be liable regardless of whether such is caused in part by the negligent, strict liability or other act or omission of a party or parties indemnified hereunder.

Said indemnity and hold harmless agreement shall also apply to claims arising from accidents to contractor, its agents or employees, whether occasioned by contractor or its employees, the owner or his employees, or by any other person or persons.

The foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

32. FINAL PAYMENT AND RELEASE:

Acceptance by the Contractor of last payment shall be a release to the Owner and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

33. INSPECTION:

The Owner shall have the right, without extra charge therefore; to inspect all materials and equipment supplied under this contract at any time, including the place of manufacture, either during performance of the work, on final inspection, or during any applicable warranty period. The Owner or its designated representative shall have the right to reject equipment, materials and work not complying with the requirements of this contract. The Owner shall notify the Contractor in writing that such equipment, material or work is rejected. Thereupon, rejected work shall be satisfactorily corrected, rejected equipment shall be satisfactorily repaired or replaced with satisfactory equipment, and rejected material shall be satisfactorily replaced with satisfactory material, all in accordance with the contract, and the Contractor shall promptly segregate and remove rejected materials and equipment from the premises. All such correcting, repairing, replacing, and removing shall be by and at the expense of the Contractor.

The Owner will perform inspections in such a manner so as not to delay the work unreasonably, and the Contractor shall perform its work in such a manner as not to delay inspection unreasonably.

34. FINAL INSPECTION:

When the work has been completed and at a time mutually agreeable to the Owner and Contractor, the Owner will make a final inspection of the work as to the acceptability and completeness of the work.

35. CLAIMS FOR LABOR AND MATERIALS:

The Contractor shall pay all subcontractors and other persons furnishing labor or materials for the work from the contract amount. The Contractor is aware of, and is fully informed of the Contractor's responsibility under article 601f V.T.C.S. pertaining to payments for goods and services contracted for by State agencies or political subdivisions, applies to construction contracts. The Contractor shall be responsible for payment to vendors and subcontractors in accordance with Chapter 2251, Texas Government Code. No third party shall have any contractual privity with the Owner. The Contractor shall indemnify and save harmless the Owner from all claims for labor and materials furnished under this contract. When requested by the Owner, the Contractor shall submit satisfactory evidence that all persons, firms, or corporations who have done work or furnished materials under this contract, for which the Owner may become legally liable, have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, an amount will be retained money due the Contractor which in addition to any other sums that may be retained will be sufficient, in the opinion of the Owner, to liquidate all such claims. Such sum will be retained until the claims as aforesaid are fully settled or satisfactorily secured.

Before final acceptance of the work by the Owner, the Contractor shall submit to the Owner in duplicate a notarized affidavit stating that all subcontractors, vendors, persons, or firms who have furnished labor or materials for the work have been fully paid and that all taxes have been paid. A statement from the surety shall also be submitted consenting to the making of the final payment.

36. ESTIMATES AND PAYMENTS:

On or about the first day of each month the Contractor shall make an estimate of the value of the work completed and of unused materials stored on the site. The Contractor and the Owner shall review the estimate prior to submitting the formal invoice to the Owner. The estimated cost of repairing, replacing, or rebuilding any part of the work or replacing materials which do not conform to the drawings and specifications will be deducted from the estimated value by the Owner.

The Contractor shall furnish to the Owner such detailed information as he may request to aid in the preparation of monthly estimates. After each estimate has been found acceptable, the Owner will pay to the Contractor on or about the 25th day of the month 90% of the estimated value less any previous payments. The Contractor shall be responsible for payment to vendors and subcontractors in accordance with article Chapter 2251, Texas Government Code.

Payments for materials stored on the site shall be based only upon the actual costs of such materials to the Contractor and shall not include any overhead or profit to the Contractor.

After official acceptance of the work, the Owner will prepare a final estimate of the work done under this contract. Preparation of the final estimate will not be made until the affidavit and statement required in the article entitled CLAIMS FOR LABOR AND MATERIALS have been received. The Owner will, within 30 days thereafter, pay the entire balance due after deducting all amounts to be retained under any provision of this contract.

36.1 PAYMENTS:

Payments may be withheld by Owner for (1) defective work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) reasonable evidence that the work cannot be completed for the unpaid balance of the contract price, (5) damage to the Owner or another contractor, (6) reasonable evidence that the work will not be completed by the scheduled work completion date and that the unpaid balance of the contract price would not be adequate to cover actual or liquidated damages for the anticipated delay, (7) persistent failure to carry out the work in accordance with the Contract Documents or (8) statutory retainage as described in Chapter 53 of the Texas Property Code.

37. LIENS:

Neither the Contractor, nor any of his subcontractors, workers or suppliers shall have the right of lien against the work performed under this contract, or any property of the Owner to secure payment for labor and materials.

38. STATE LAW:

This contract is performable in the State of Texas and shall be governed by the laws of the State of Texas. Venue on any suit hereunder shall be in Dallas County, Texas.



The following are required for compliance with regulations pertaining to federally financed projects. The "Notice to All Employees" poster and General Wage Decision must be predominantly posted at the work site at all times.

Payrolls for each week that the project is under construction must be submitted to the Community Development staff to confirm that all employees are paid the wage rate dictated by the Wage Decision. In addition to the weekly payrolls, Community Development staff will conduct unannounced interviews of employees to ensure that the wage rates are followed.

All new hires will need to be reported, and contractors are required to the greatest extent feasible to hire low and very low-income residents that reside in the metropolitan area.

All contractors and subcontractors are required to register with the Federal System For Award Management (SAM) system and acquire a D-U-N-S registration prior to being awarded the contract.

The following documents are enclosed to provide guidance and clarification in this regard:

1. "Notice to All Employees" Posters (English/Spanish)- must be posted at the jobsite where all employees can view at all times with the applicable wage rate decision.
2. "General Decision" -The applicable prevailing wage rate for this project as determined by the U.S. Department of Labor. This must be posted at the jobsite where all employees can view at all times with the "Notice to all Employees" Poster.
3. "Davis Bacon Labor Standards -A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects" Copy of the official guidebook of the Davis Bacon Act's applicable provisions.
4. "A CDBG Contractors Guide to Hiring & Contracting" – a summary of Section 3 requirements.
5. "Contractor Registration Requirements for CDBG/Federal Government Projects" – a summary of D-U-N-S, Federal System For Award Management (SAM) and Historically Underutilized Business (HUB) registration requirements.

**SECTION J**  
**ADDITIONAL PROVISIONS**  
**FOR PROJECTS UTILIZING FEDERAL FUNDING**  
**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)**

The following applies to all Contractors awarded a project funded, whether in whole or in part, with Community Development Block Grant:

- I. CONTRACTOR agrees to and shall comply with the following provisions:
  - A. All provisions included pursuant to 24 CFR Part 85.36 and numbered below.
    1. Breach of Contract. Substandard or untimely performance as determined by City monitoring will constitute non-compliance. CONTRACTOR shall take action to correct substandard performance within a reasonable period of time after being notified by the City in order to avoid suspension or termination procedures being initiated. City may, in accordance with 24 CFR 85.43, suspend or terminate the agreement with CONTRACTOR by notice in writing to CONTRACTOR if the CONTRACTOR materially fails to comply with any term of the award, or for convenience in accordance with 24 CFR 85.44..
    2. Termination. City may, in accordance with 24 CFR 85.43, suspend or terminate the agreement with CONTRACTOR by notice in writing to CONTRACTOR if the CONTRACTOR materially fails to comply with any term of the award, or for convenience in accordance with 24 CFR 85.44. The CONTRACTOR understands that all claims, disputes and other matters in question between the parties to this agreement, arising out of or relating to this agreement or the breach thereof, shall be resolved as provided by State of Texas law. Venue shall be in the County of Dallas, Texas. Failure to timely comply with the contract without approval from the City of Carrollton shall be deemed a breach of this agreement and the expenses and costs incurred by the City of Carrollton shall be the burden of the Contractor. Disputes regarding the interpretation of this contract shall be resolved in favor of the City of Carrollton.
    3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (Applies to construction contracts in excess of \$10,000.)
    4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to all contracts and subgrants for construction or repair.) CONTRACTOR shall comply with the Copeland "Anti-Kickback Act" (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3). The Act requires in part that no contractor or subcontractor shall induce any person employed in the construction, completion, or repair of public buildings or public work, financed in whole or in part by loans or grants from the United States, by any means, to give up any part of the compensation to which he/she

is otherwise entitled. Workers must be paid weekly, and deductions from workers' pay must be permissible, and contractors/subcontractors must submit weekly payrolls and maintain those records for a minimum of three (3) years after completion of the project. The City of Carrollton shall report all suspected or reported violations to the U.S. Department of Labor and to the U.S Department of Housing and Urban Development.

5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation.) Contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors shall be required to pay wages not less than once a week and that deductions from workers' pay be permissible. A copy of the applicable prevailing wage rates is included in this solicitation and a decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. Any known changes to these wage rates prior to award of contract, shall be made known to offerers. In addition, Contractors will be required to provide payroll information to the City of Carrollton on a weekly basis for verification of compliance. The City of Carrollton shall report all suspected or reported violations of this condition to the U.S. Department of Housing and Urban Development and/or the U.S. Department of Labor. *(See attached wage determination schedule applicable to project)*
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers) Applies to any contracts in excess of a total of \$100,000.00, which may involve the employment of mechanics or laborers. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of that standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. (This requirement applies to time spent on federally assisted contracts only.) The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous as determined under construction safety and health standards promulgated by the Secretary of Labor.
7. Reporting. Payrolls for each week that the project is under construction must be submitted to the Community Development staff to confirm that all employees are paid the wage rate dictated by the Wage Decision. In addition to the weekly payrolls, Community Development staff will conduct unannounced interviews of employees to ensure that the wage rates are followed. All new hires will need to be reported, and contractors are required to the greatest extent feasible to hire low and very low income residents that reside in the metropolitan area. CONTRACTOR shall establish and

maintain appropriate documentation to verify stated performance objectives and shall submit such documentation to to the City on a weekly basis, or as requested more often if deemed necessary. CONTRACTOR further agrees to reasonable on-site monitoring by representatives of the City and the U.S. Department of Housing and Urban Development. CONTRACTOR shall submit a final project close out report to the City not later than thirty (30) days after the end of the Contract Period.

8. Patent Rights, Copyrights & Inventions. CONTRACTOR understands that the U.S. Department of Housing and Urban Development and the City of Carrollton retain patent rights and copyrights on any project, which involves research, developmental, experimental, or demonstration work. If the federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued the by the awarding agency.
9. Access to Records. CONTRACTOR understands that the City of Carrollton and its representatives, the State of Texas, the U.S. Department of HUD, the Comptroller General of the United States, or any of their authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract, for the purpose of performing audit or project monitoring, and such records shall be subject to examination, copying, excerpting or transcribing. The City reserves the right to conduct additional financial and compliance audits of the funds received and performance rendered under this Agreement. CONTRACTOR agrees to permit City or its authorized representatives to audit CONTRACTOR's records and to obtain any documents, materials or information necessary to facilitate such audit.
10. CONTRACTOR shall retain all records pertaining to project, agreement and payment for a period of three (3) years after final payment is made and all other pending matters are finalized.
11. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Applies to all contracts, subcontracts, and subgrants of amounts in excess of \$100,000) The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)); Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738; and Environmental Protection Agency Regulations (40 CFR, Part 15), which prohibit the use under Non-Exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations will be reported to HUD and to the USEPA Assistant Administrator for Enforcement (EN-329).

12. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871) CONTRACTOR shall recognize and adhere to mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- B. "Section 3" of the Housing and Urban Development Act of 1968. (Applies to Contracts of \$100,000 and all subcontracts of \$100,000 or more.) This project receives direct Federal financial assistance, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, which requires that to the greatest extent feasible, CONTRACTOR shall provide opportunities for training and employment to low and very low income residents of the project area and to award contracts for work in connection with the project to business concerns providing economic opportunities for low and very low income persons that reside in the metropolitan area in which the project is located.
  - C. Energy Conservation Plan. CONTRACTOR shall recognize and adhere to mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201, Public Law 94-163, as Amended)
  - D. Equal Employment Opportunity Laws.
    1. Compliance under Executive Order 11246, 11375 and supplemental regulations at 41 CFR part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor including:
      - a. Certification of Non-segregated Facilities (for contracts over \$10,000.00)
      - b. Title VI, Civil Rights Act of 1964  
Affirmatively furthering the policies of the Fair Housing Act
      - c. Section 109 of the Housing and Community Development Act of 1974.  
No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act.
      - d. Section 503 of the Rehabilitation Act of 1973 (for contracts \$2,500.00 or over)
      - e. Age Discrimination Act of 1975. Prohibits against discrimination on the basis of age.
      - f. Section 504 of the Rehabilitation Act of 1973 Prohibits against discrimination on the basis of disability.
  - E. Regulations Applicable to Minority Business Enterprises. The Contractor also agrees to ensure Minority Business Enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure

that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts

- F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000). CONTRACTOR acknowledges that any person who makes an expenditure prohibited under 31 U.S.C. §1352 or who fails to file or amend the disclosure form to be filed or amended by said provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure. CONTRACTOR shall comply with requirements contained in Section 1352 of title 31, United States Code, certifying that:
1. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;
  2. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and
  3. He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- G. Restrictions On All Public Works Projects. No Contractor, or subcontractor, of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) may be awarded a contract or a subcontract.
- H. Debarment & Suspension. CONTRACTOR represents SUBCONTRACTOR is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, and shall disclose to City if at any time CONTRACTOR is debarred, suspended or otherwise excluded from eligibility in a program receiving federal assistance of any kind. CONTRACTOR shall not knowingly do business that violates the provisions of Executive Order 12549.
- I. Prompt Payment. CONTRACTOR shall comply with the Texas Prompt Payment Act (Texas Government Code § 2251) effective July 1, 1986, which in part, requires a contractor to pay subcontractors within ten (10) calendars days after receipt of payment from the City.
- J. All Federal State And Local Laws applicable to the project which may include the following: (may also be listed above)
- 24 CFR Part 570;
  - 24 CFR Parts 84 and 85;

- OMB Circular 2 CFR Part 200, The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- The Davis-Bacon Fair Labor Standards Act;
- The Contract Work Hours and Safety Standards Act of 1962;
- Copeland “Anti-Kickback” Act of 1934;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA);
- Title VI of the Civil Rights Act of 1964; (Public Law 88-352 implemented in 24 CFR Part 1);
- Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (Public Law 90-234 and Executive Order 11063 as amended by Executive Order 12259 (implemented in 24 CFR Part 107);
- Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
- Section 3 of the Housing and Urban Development Act of 1968;
- Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
- Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
- Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
- The Architectural Barriers Act of 1968;
- The Americans with Disabilities Act (ADA) of 1990;
- The Age Discrimination Act of 1975, as amended;
- National Environmental Policy of 1969 (42 USC 4321 et seq.) as amended;
- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Application Instructions CDBG PY 2017 SS PY 2018 9 Part 39;
- Historic Preservation Act of 1966, as amended, and related laws and Executive Orders;
- Executive Order 11988, Floodplain Management, 1977 (42 FR 26951 et seq.);
- Flood Disaster Protection Act of 1973;
- Procurement Standards (2 CFR 200.322);
- Rights to Inventions Made Under a Contract or Agreement (37 CFR 401.2 (a));
- Energy Efficiency (2 CFR Part 200 Appendix II); and
- Recycling (2 CFR Part 200 Appendix II).

## II. MISCELLANEOUS CONTRACT PROVISIONS APPLICABLE TO CDBG FUNDED PROJECTS

- A. CONTRACTOR shall submit appropriate documentation and invoices to the City’s Community Development Department. CONTRACTOR may not request disbursement of funds until the funds are needed for payment of eligible costs. The amount of each request must be equal to the proof of payment submitted for reimbursement and eligible expenditures. Funds allocated by the City of Carrollton for this project which have not been invoiced by CONTRACTOR within ninety (90) calendar days after the date of City’s acceptance of the completed project shall revert to the City of Carrollton to be allocated for other activities. Invoices shall not be submitted and payment shall not be made more often than once every thirty (30) days throughout the project period.

Payments may be contingent upon certification by the City that the CONTRACTOR is performing in accordance with the standards specified in this Agreement.

- B. The obligations of the City are subject to the receipt of sufficient funding from the U.S. Department of Housing and Urban Development. If such funding is not provided by the U.S. Department of Housing and Urban Development, the City and CONTRACTOR are relieved of any further obligation to the other.
- C. No project income is anticipated. In the event there is program income derived from the use of CDBG funds disbursed for the project, such program income shall be returned to the City for further reallocation.
- D. CONTRACTOR shall establish, maintain, and submit to City documentation concerning project budget and expenditures in a form acceptable to the City. All project costs must be reasonable and consistent with policies and procedures of the City of Carrollton and the U.S. Department of Housing and Urban Development. All expenditures must be accorded consistent treatment, and must be determined to be in accordance with generally accepted accounting principles ("GAAP"). The City reserves the right to audit all budgets, work schedules and accounts.
- E. Disbursed funds must be deposited in a depository having federal depository insurance. City shall require of CONTRACTOR that the Department of Housing and Urban Development of the United States Government, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Project, for the purpose of making audit examinations, excerpts and transcriptions.
- F. In the event CONTRACTOR is allocated \$500,000.00 or more in federal funds from any agencies of the U.S. Government, CONTRACTOR shall also comply with U.S. Government federal audit requirements, including the requirements contained in OMB Circular A-133.
- G. CONTRACTOR shall be liable to the City for any costs disallowed by the U.S. Department of Housing and Urban Development pursuant to financial and compliance audit(s) of funds received under this Agreement. Reimbursement to the City of such disallowed costs shall be paid by CONTRACTOR from funds which were not provided or otherwise made available to CONTRACTOR under this Agreement.
- H. CONTRACTOR shall ensure all subcontractors will comply with all applicable federal, state and local laws, and shall cause all of the provisions of this Section J in its entirety to be incorporated in and made a part of any subcontract executed in the performance of this Agreement.
- I. CONTRACTOR shall take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the City. The CONTRACTOR will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not

enter into any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- J. CONTRACTOR shall monitor all subcontracted services on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
- K. CONTRACTOR and all SUBCONTRACTORS shall register with the Federal System For Award Management (SAM) prior to awarding of the bid to ensure the CONTRACTOR and any SUBCONTRACTOR is eligible to perform services for projects funded by the U.S. Government.

### III. FORMS, INSTRUCTIONS & DOCUMENTS

A. The documents listed below are enclosed to provide information and guidance regarding employee, subcontractor, wage and payroll requirements and are hereby incorporated in their entirety:

1. "Notice to All Employees" Poster- must be posted at the jobsite where all employees can view at all times with the applicable wage rate decision.

**THE "NOTICE TO ALL EMPLOYEES" POSTER AND GENERAL WAGE DECISION MUST BE PREDOMINANTLY POSTED AT THE WORK SITE AT ALL TIMES.**

2. "General Decision" -The applicable prevailing wage rate for this project as determined by the U.S. Department of Labor. This must be posted at the jobsite where all employees can view at all times with the "Notice to all Employees" Poster.
3. "Davis Bacon Labor Standards -A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects" Copy of the official guidebook of the Davis Bacon Act's applicable provisions.
4. "A CDBG Contractors Guide to Hiring & Contracting" – a summary of Section 3 requirements and applicable provisions.
5. "Contractor Registration Requirements for CDBG/Federal Government Projects" – a summary of D-U-N-S, SAM and HUB registration requirements.

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# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

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THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

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**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.

For additional information:



**1-866-4-USWAGE**  
(1-866-487-9243)    TTY: 1-877-889-5627

**atIHD**  
u.s. Wage and Hour Division

**WWW.WAGEHOUR.DOL.GOV**

# DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

## PARA OBREROS Y MECANICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCION FEDERAL O CON ASISTENCIA FEDERAL

### LA SECCION DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

#### SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decision de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

#### SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa basica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

#### CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podria aplicar danos y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las clausulas contractuales de Davis-Bacon permiten la terminacion y exclusion de contratistas para efectuar futuros contratos federales hasta tres anos. El contratista que falsifique los registros certificados de las nominas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

#### APRENDICES

Las tasas de aprendices solo se aplican a aprendices correctamente inscritos bajo programas federates o estatales aprobados.

#### PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de informacion adicional sobre los salarios aplicables, pongase en contacto con el Contratista Oficial que aparece abajo:

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener informacion adicional:  
**1-866-4-USWAGE**  
(1-866-487-9243) TTY: 1-877-889-5627

**511HD**  
U.S. Wage and Hour Division

**WWW.WAGEHOUR.DOL.GOV**

General Decision Number: TX180291 01/12/2018 TX291

Superseded General Decision Number: TX20170291

State: Texas

Construction Type: Building

County: Dallas County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections

under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number    Publication Date

0            01/05/2018

1            01/12/2018

ASBE0021-011 06/01/2016

Rates        Fringes

ASBESTOS WORKER/HEAT & FROST

INSULATOR (Duct, Pipe and

Mechanical System Insulation)....\$ 24.32        7.52

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BOIL0074-003 01/01/2017

Rates        Fringes

BOILERMAKER.....\$ 28.00        22.35

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CARP1421-002 04/01/2016

Rates        Fringes

MILLWRIGHT.....\$ 26.60        8.65

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\* ELEV0021-006 01/01/2018

Rates Fringes

ELEVATOR MECHANIC.....\$ 39.97 32.645+a+b

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

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ENGI0178-005 06/01/2014

Rates Fringes

POWER EQUIPMENT OPERATOR

|  |       |
|--|-------|
| (1) Tower Crane.....\$ 29.00   | 10.60 |
| (2) Cranes with Pile<br>Driving or Caisson<br>Attachment and Hydraulic<br>Crane 60 tons and above.....\$ 28.75 | 10.60 |
| (3) Hydraulic cranes 59<br>Tons and under.....\$ 27.50   | 10.60 |

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IRON0263-005 06/01/2017

Rates Fringes

IRONWORKER (ORNAMENTAL AND  
STRUCTURAL).....\$ 23.25 7.32

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PLUM0100-005 11/01/2017

Rates Fringes

HVAC MECHANIC (HVAC Unit  
Installation Only).....\$ 30.84 11.51

PIPEFITTER (Excludes HVAC  
Pipe Installation).....\$ 30.84 11.51

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SUTX2014-017 07/21/2014

Rates Fringes

BRICKLAYER.....\$ 19.50 4.27

CARPENTER, Excludes Drywall  
Hanging, Form Work, and Metal  
Stud Installation.....\$ 17.13 2.97

CAULKER.....\$ 14.71 0.00

CEMENT MASON/CONCRETE FINISHER...\$ 13.40 0.00

DRYWALL HANGER AND METAL STUD

|                                  |          |      |
|----------------------------------|----------|------|
| INSTALLER.....                   | \$ 15.45 | 0.00 |
| ELECTRICIAN (Alarm               |          |      |
| Installation Only).....          | \$ 21.52 | 4.16 |
| ELECTRICIAN (Communication       |          |      |
| Technician Only).....            | \$ 16.40 | 2.87 |
| ELECTRICIAN (Low Voltage         |          |      |
| Wiring Only).....                | \$ 20.03 | 3.04 |
| ELECTRICIAN, Excludes Low        |          |      |
| Voltage Wiring and               |          |      |
| Installation of Alarms/Sound     |          |      |
| and Communication Systems.....   | \$ 21.51 | 3.69 |
| FORM WORKER.....                 | \$ 12.32 | 0.00 |
| GLAZIER.....                     | \$ 16.15 | 2.13 |
| HIGHWAY/PARKING LOT STRIPING:    |          |      |
| Operator (Striping Machine)..... | \$ 10.04 | 2.31 |
| INSTALLER - SIDING               |          |      |
| (METAL/ALUMINUM/VINYL).....      | \$ 14.26 | 0.00 |
| INSTALLER - SIGN.....            | \$ 15.61 | 0.00 |
| INSULATOR - BATT.....            | \$ 13.00 | 0.00 |

IRONWORKER, REINFORCING.....\$ 12.24 0.00

LABORER: Common or General.....\$ 11.57 0.00

LABORER: Mason Tender - Brick...\$ 11.00 1.70

LABORER: Mason Tender -  
Cement/Concrete.....\$ 10.64 0.00

LABORER: Pipelayer.....\$ 13.00 0.35

LABORER: Plaster Tender.....\$ 14.50 0.00

LABORER: Roof Tearoff.....\$ 11.28 0.00

LABORER: Landscape and  
Irrigation.....\$ 12.00 0.23

LATHER.....\$ 16.00 0.00

OPERATOR:  
Backhoe/Excavator/Trackhoe.....\$ 13.06 0.00

OPERATOR: Bobcat/Skid  
Steer/Skid Loader.....\$ 13.93 0.00

OPERATOR: Bulldozer.....\$ 18.29 1.31

|   |          |      |
|---|----------|------|
| OPERATOR: Drill.....  | \$ 13.00 | 0.50 |
| OPERATOR: Forklift.....   | \$ 13.38 | 0.81 |
| OPERATOR: Grader/Blade.....   | \$ 13.05 | 0.00 |
| OPERATOR: Loader.....   | \$ 14.02 | 1.82 |
| OPERATOR: Mechanic.....   | \$ 17.52 | 3.33 |
| OPERATOR: Paver (Asphalt,<br>Aggregate, and Concrete).....                | \$ 18.44 | 0.00 |
| OPERATOR: Roller.....   | \$ 15.04 | 0.00 |
| PAINTER (Brush, Roller and<br>Spray, Excluding<br>Drywalling/Taping)..... | \$ 13.60 | 2.24 |
| PAINTER: Drywall<br>Finishing/Taping Only.....                            | \$ 14.28 | 3.04 |
| PLASTERER.....  | \$ 15.37 | 0.00 |
| PLUMBER (HVAC Pipe<br>Installation Only).....                             | \$ 23.87 | 6.66 |
| PLUMBER, Excludes HVAC Pipe<br>Installation.....                          | \$ 22.70 | 5.65 |

|   |          |       |
|---|----------|-------|
| ROOFER.....   | \$ 17.19 | 0.00  |
|   |          |       |
| SHEET METAL WORKER (HVAC Duct<br>Installation Only).....    | \$ 21.10 | 5.50  |
|   |          |       |
| SHEET METAL WORKER, Excludes<br>HVAC Duct Installation..... | \$ 24.88 | 7.23  |
|   |          |       |
| SPRINKLER FITTER (Fire<br>Sprinklers).....                  | \$ 21.25 | 15.55 |
|   |          |       |
| TILE FINISHER.....  | \$ 11.22 | 0.00  |
|   |          |       |
| TILE SETTER.....  | \$ 14.25 | 0.00  |
|   |          |       |
| TRUCK DRIVER: 1/Single Axle<br>Truck.....                   | \$ 16.40 | 0.81  |
|   |          |       |
| TRUCK DRIVER: Dump Truck.....                               | \$ 12.39 | 1.18  |
|   |          |       |
| TRUCK DRIVER: Flatbed Truck.....                            | \$ 19.65 | 8.57  |
|   |          |       |
| TRUCK DRIVER: Semi-Trailer<br>Truck.....                    | \$ 12.50 | 0.00  |
|   |          |       |
| TRUCK DRIVER: Water Truck.....                              | \$ 12.00 | 4.11  |

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example:  
PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate

changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010

08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted

because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



U.S. Department of Housing  
and Urban Development

Labor Relations Desk Guide  
LR01.DG

# DAVIS-BACON

## LABOR STANDARDS

*A Contractor's Guide  
to Prevailing Wage Requirements  
for Federally-Assisted Construction Projects*

*January 2012  
Previous versions obsolete*





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## INTRODUCTION

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

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

There are three chapters in this Guide. The first chapter offers a brief description of the laws and regulations associated with Federal labor standards administration and enforcement and discusses both what's in your contract that requires Davis-Bacon compliance and your responsibilities. The second chapter deals with labor standards and payroll reporting requirements. The third chapter discusses what can happen in the event there is a dispute about the wage rates that should be (or have been) paid and any back wages that may be due.

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

**Visit the Office of Labor Relations on-line:**

<http://www.hud.gov/offices/olr>

Obtain additional copies of this Guide and other publications at our website or by telephone from HUD's Customer Service Center at (800)767-7468.



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## CHAPTER 1 LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

The following paragraphs describe what the labor standards laws and regulations actually say and what they mean to you on HUD projects:

### 1-1 DAVIS-BACON AND OTHER LABOR LAWS.

- a. **The Davis-Bacon Act (DBA).** The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U. S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.

- b. **The Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts **except** where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

CWHSSA does not apply to prime contracts of \$100,000 or less. In addition, some HUD projects are not covered by CWHSSA because some HUD programs only provide loan guarantees or insurance. CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g., Davis-Bacon wage rates, or HUD-determined rates for operation of public housing and Indian block grant-assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter SL-95-01, CWHSSA Coverage threshold for overtime and health and safety provision, available on-line at the HUD Labor Relations Library at: [www.hud.gov/offices/olr/library.cfm](http://www.hud.gov/offices/olr/library.cfm))

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- c. **The Copeland Act (Anti-Kickback Act).** The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.
  - d. **The Fair Labor Standards Act (FLSA).** The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

## **1-2 DAVIS-BACON REGULATIONS.**

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

DOL Regulations are available on-line on the World Wide Web:  
[http://www.dol.gov/dol/allcfr/Title\\_29.htm](http://www.dol.gov/dol/allcfr/Title_29.htm)

## **1-3 CONSTRUCTION CONTRACT PROVISIONS**

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally bound into the contract specifications.

- a. The labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-2554, Supplementary Conditions to the Contract for Construction, which is issued primarily for FHA multifamily housing and other construction projects

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administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects, and the HUD-5370, General Conditions of the Contract for Construction or the HUD-5370-EZ (construction contracts ≤\$100,000) which are used for Public and Indian Housing projects.

HUD program labor standards forms are available on-line at:  
[www.hud.gov/offices/adm/hudclips/index.cfm](http://www.hud.gov/offices/adm/hudclips/index.cfm)

- b. Davis-Bacon Wage Decisions. The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved.

All current Davis-Bacon wage decisions can be accessed on-line at no cost at:  
<http://www.wdol.gov>

#### **1-4 RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR**

The principal contractor (also referred to as the **prime** or **general contractor**) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See Contract Administrator, below.)

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

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## 1-5 RESPONSIBILITY OF THE CONTRACT ADMINISTRATOR.

The **contract administrator** is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals (e.g., the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see 2-1, **The Wage Decision**) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see 2-6, **Compliance Reviews**) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Relations field staff. But many HUD-assisted projects are administered by local contracting agencies such as Public Housing Agencies (PHAs), Indian tribes and tribally-designated housing entities (TDHEs), and States, cities and counties under HUD's Community Development Block Grant (CDBG) and HOME programs. In these cases, the contract administrator will likely be local agency staff. In either case, the guidance for you remains essentially the same.

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

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## CHAPTER 2    HOW TO COMPLY WITH LABOR STANDARDS AND PAYROLL REPORTING REQUIREMENTS

**WHERE TO START?**    Now that you know you're on a Davis-Bacon project and you know some of the legal and practical implications, what's next?

### SECTION I - THE BASICS

#### 2-1    **THE WAGE DECISION.**

Davis-Bacon labor standards stipulate the wage payment requirements for Carpenters, Electricians, Plumbers, Roofers, Laborers, and other construction work classifications that may be needed for the project. The Davis-Bacon wage decision that applies to the project contains a schedule of work classifications and wage rates that must be followed. If you don't have it already (and by now you should), you'll want to get a copy of the applicable Davis-Bacon wage decision.

Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See 1-3, Construction Contract Provisions.

- a. **The work classifications and wage rates.** A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications. You'll want to make sure that the work classification(s) you need are contained in the wage decision and make certain you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (for example, residential and commercial work) and can be lengthy and difficult to read. Contact the contract administrator (HUD Labor Relations field staff or local agency staff) if you have any trouble reading the wage decision or finding the work classification(s) you need.

To make reading lengthy wage decisions easier for you, the contract administrator may prepare a Project Wage Rate Sheet (HUD-4720). This Sheet is a one-page transcript that will show only the classifications and wage rates for a particular project. A blank copy of a Project Wage Rate Sheet is provided for you in the appendix. Also, a fillable version of this form is available on-line at HUDClips (see web address in the Appendix). Contact the contract administrator monitoring your project for assistance with a Project Wage Rate Sheet.

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- b. **Posting the wage decision.** If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of the DOL Davis-Bacon poster titled Employee Rights under the Davis-Bacon Act (Form WH-1321) at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The Employee Rights under the Davis-Bacon Act poster is available in English and Spanish on-line at HUDClips (see address in the Appendix).

The Employee Rights under the Davis-Bacon Act poster (WH-1321) replaces the Notice to all Employees. The new poster is available in English and Spanish on-line at HUDClips (see address in the Appendix).

## 2-2 **ADDITIONAL "TRADE" CLASSIFICATIONS AND WAGE RATES.**

What if the work classification you need isn't on the wage decision? If the work classification(s) that you need doesn't appear on the wage decision, you will need to request an additional classification and wage rate. This process is usually very simple and you'll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you'll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

- a. **Additional classification rules.** Additional classifications and wage rates can be approved if:
1. The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the county where the project is located).
  2. The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision you can't request another Electrician classification and rate.)
  3. The proposed wage rate for the requested classification "fits" with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.)  
And,
  4. The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers' representatives, must agree with the proposed wage rate.

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- b. **Making the request.** A request for additional classification and wage rate must be made in writing through the contract administrator. (If the contract administrator is a local agency, the agency will send the request to the HUD Labor Relations staff.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.
- c. **HUD review.** The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/referral letter to the DOL.

If the HUD Labor Relations staff doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the HUD Labor Relations staff will not approve the request. In this case, the staff will send your request to the DOL with an explanation why HUD believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

- d. **DOL decision.** The DOL will respond to HUD Labor Relations in writing about the additional classification and wage rate request. HUD Labor Relations will notify you of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision.

If the DOL does not approve the request, you will be notified about what classification and wage rate should be used for the work in question. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.

It's always a good idea to talk to the contract administrator before submitting an additional classification and wage rate request. The contract administrator can offer suggestions and advice that may save you time and increase the likelihood that DOL will approve your request. Usually, the contract administrator can give you an idea about what the DOL will finally decide.

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## 2-3 CERTIFIED PAYROLL REPORTS.

You'll need to submit a weekly certified payroll report (CPR) beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

- a. **Payroll formats.** The easiest form to use is DOL's WH-347, Payroll. A sample copy of the WH-347 is included in the back of this Guide. You may access a fillable version of the WH-347 on-line at HUDClips (see web address in the Appendix). Also, the contract administrator can provide a few copies of the WH-347 that you can reproduce.

You are not required to use Payroll form WH-347. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the WH-347.

- b. **Payroll certifications.** The weekly payrolls are called certified because each payroll is signed and contains language certifying that the information is true and correct. The payroll certification language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347, or any other format which contains the same certification language on the WH-347 (reverse).

DOL's website has Payroll Instructions and the Payroll form WH-347 in a "fillable" PDF format at this address:  
[www.dol.gov/whd/forms/wh347.pdf](http://www.dol.gov/whd/forms/wh347.pdf)

- c. **"No work" payrolls.** "No work" payrolls may be submitted whenever there is a temporary break in your work on the project, for example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. (See tip box, for "no work" payroll exemption!) However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you number payrolls consecutively or if you send a note, you do not need to send "no work" payrolls.

If you number your payroll reports consecutively, you do not need to submit "no work" payrolls!

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- d. **Payroll review and submission.** The prime contractor should review each subcontractor’s payroll reports for compliance prior to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

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

- e. **Payroll retention.** Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.
- f. **Payroll inspection.** In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or from DOL.

## 2-4 **DAVIS-BACON DEFINITIONS.**

Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

- a. **Laborer or mechanic.** “Laborers” and “mechanics” mean anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, sheet metal workers, etc.), apprentices, and trainees and, for CWHSSA purposes, watchmen and guards. “Laborers” and “mechanics” are the two groups of workers that must be paid not less than Davis-Bacon wage rates.
1. **Working foremen.** Foremen or supervisors that regularly spend more than 20% of their time performing construction work and do not meet the exclusions in paragraph 2 below are covered “laborers” and “mechanics” for labor standards purposes for the time spent performing construction work.
  2. **Exclusions.** People whose duties are primarily administrative, executive or clerical are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc. (Contact the contract administrator if you have any questions about whether a particular employee is excluded.)

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- b. **Employee.** Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the wage decision for the classification of work they perform. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and mechanics.

For more information about working subcontractors, ask the contract administrator or your HUD Labor Relations Field Staff for a copy of Labor Relations Letter LR-96-01, Labor standards compliance requirements for self-employed laborers and mechanics. Labor Relations Letters and other helpful Labor Relations publications are available at HUD’s Labor Relations web site (see the list of web site addresses in the Appendix).

- c. **Apprentices and trainees.** The only workers who can be paid less than the wage rate on the wage decision for their work classification are “apprentices” and “trainees” registered in approved apprenticeship or training programs. Approved programs are those which have been registered with the DOL or a DOL-recognized State Apprenticeship Council (SAC). Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

Most often, the apprentice/trainee wage rate is expressed as a series of percentages tied to the amount of time spent in the program. For example, 0-6 months: 65%; 6 months - 1 year: 70%; etc. The percentage is applied to the journeyman’s wage rate. On Davis-Bacon projects, the percentage must be applied to the journeyman’s wage rate on the applicable wage decision for that craft.

1. **Probationary apprentice.** A “probationary apprentice” can be paid as an apprentice (less than the rate on the wage decision) if the DOL or SAC has certified that the person is eligible for probationary employment as an apprentice.
2. **Pre-apprentice.** A “pre-apprentice”, that is, someone who is not registered in a program and who hasn’t been DOL- or SAC-certified for probationary apprenticeship is not considered to be an “apprentice” and must be paid the full journeyman’s rate on the wage decision for the classification of work they perform.
3. **Ratio of apprentices and trainees to journeymen.** The maximum number of apprentices or trainees that you can use on the job site cannot exceed the ratio of apprentices or trainees to journeymen allowed in the approved program.

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- d. **Prevailing wages or wage rates.** Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless you provide bona fide fringe benefits for your employees.
1. **Piece-work.** Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. For example, a Drywall Hanger's earnings may be calculated based upon the square feet of sheetrock actually hung, a Painter's earnings may be based upon the number of units painted. Employers may calculate weekly earnings based upon piece rates provided the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. Accurate time records must be maintained for any piece-work employees. If the weekly piece rate earnings are not sufficient, the employer must recompute weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.
- e. **Fringe benefits** Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

Note that the total hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/hour fringe benefits, you must pay no less than that total (\$15/hour) in the basic rate or basic rate plus whatever fringe benefit you may provide. You can meet this obligation in several ways: you could pay the base wage and fringe benefits as stated in the wage decision, or you could pay \$15 in base wage with no fringe benefits, or you could pay \$12 basic plus \$3 fringe benefits. You can also off-set the amount of the base wage if you pay more in fringe benefits such as by paying or \$9 basic plus \$6 fringe benefits; as long as you meet the total amount. The amount of the base wage that you may off-set with fringe benefits is limited by certain IRS and FLSA requirements.

- f. **Overtime.** Overtime hours are defined as all hours worked on the contract in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

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- g. **Deductions.** You may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to “kick-back” (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.

Referring, again, to our example above where the wage decision requiring a \$15 total wage obligation (\$10 basic wage plus \$5 fringe benefits) was met by paying \$9 base wage plus \$6 fringe benefits: Note that overtime rates must be based on one and one-half times the basic rate as stated on the wage decision. In the above example, the employer must pay for overtime: \$15/hr (\$9 basic + \$6 fringe) plus \$5 (one-half of \$10, the wage decision basic rate) for a total of \$20 per hour.

- h. **Proper designation of trade.** You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters even if they aren’t considered by you to be fully trained as a Carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.
1. **Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each classification in which work was performed only if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.
- i. **Site of work.** The “site of work” is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. “Site of work” can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

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## SECTION II - REPORTING REQUIREMENTS

### 2-5 COMPLETING A PAYROLL REPORT.

What information has to be reported on the payroll form? The weekly payroll form doesn't ask for any information that you don't already need to keep for wage payment and tax purposes. For example, you need to know each employee's name; his or her work classification (who is working for you and what do they do?), the hours worked during the week, his or her rate of pay, the gross amount earned (how much did they earn?), the amounts of any deductions for taxes, etc., and the net amount paid (how much should the paycheck be made out for?). No more information than you need to know in order to manage your work crew and make certain they are paid properly. And, certainly, no more information than you need to keep for IRS, Social Security and other tax and employment purposes.

For many contractors, the Weekly Certified Payroll is the only Davis-Bacon paperwork you need to submit!

You are required to submit certified payrolls to illustrate and document that you have complied with the prevailing wage requirements. The purpose of the contract administrator's review of your payrolls is to verify your compliance. Clearer and complete payroll reports will permit the contract administrator to complete reviews of your payroll reports quickly.

- a. **Project and contractor/subcontractor information.** Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the week dates in the spaces provided. Numbering payrolls is optional but strongly recommended.
- b. **Employee information.** Effective January 18, 2009, payrolls shall not report employee addresses or full Social Security Numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

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

- c. **Work classification.** Each employee must be classified in accordance with the wage decision based on the type of work they actually perform.

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1. **Apprentices or trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.
  2. **Split classifications.** For an employee that worked in a split classification, make a separate entry for each classification of work performed distributing the hours of work to each classification, accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
- d. **Hours worked.** The payroll should show ONLY the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for all projects. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.
- e. **Rate of pay.** Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you do not participate in approved fringe benefit programs, add the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.
1. **Piece-work.** For any piece-work employees, the employer must compute an effective hourly rate for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.

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

Remember, the overtime rate is computed at one and one-half times the basic rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the overtime rate would be:  $(\$10 \times 1 \frac{1}{2}) + \$5 = \$20/\text{hour}$ .

- f. **Gross wages earned.** Show the gross amount of wages earned for work performed on this project. Note: For employees with work hours and earnings on other projects, you may show gross wages for this project over gross earnings all projects (for example, \$425.40/\$764.85) and base deductions and net pay on the "all projects" earnings.

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- g. **Deductions.** Show the amounts of any deductions from the gross earnings. “Other” deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing by the employee or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

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

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

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

- j. **Signature.** Make sure the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Signatures in pencil; signature stamps; xerox, pdf and other facsimiles are not acceptable.

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## SECTION III - PAYROLL REVIEWS AND CORRECTIONS

### 2-6 COMPLIANCE REVIEWS.

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. The DOL may also independently conduct its own reviews (see 1-5). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

- a. **On-site interviews.** Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative, or HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator.
- b. **Project payroll reviews.** The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

### 2-7 TYPICAL PAYROLL ERRORS AND REQUIRED CORRECTIONS.

The following paragraphs describe common payroll errors and the corrective steps you must take.

- a. **Inadequate payroll information.** If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate, e.g., does not contain all of the necessary information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.
- b. **Missing identification numbers.** If the first payroll on which an employee appears does not contain the employee's individually identifying number, the employer will be asked to supply the missing information. This information can be reported on the next payroll submitted by the employer if the employer is still working on the project. Otherwise, the employer will be asked to submit a correction certified payroll.

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- c. **Incomplete payrolls.** If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a correction certified payroll.
- d. **Classifications.** If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision or the employer may request an additional classification and wage rate (see 2-2). If reclassification results in underpayment (i.e., the wage rate reported on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees. (see 2-8 for instructions about wage restitution.)
- e. **Wage rates.** If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.
- f. **Apprentices and trainees.** If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.
- g. **Overtime.** If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:
1. If the project is subject to CWHSSA overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project. The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,
  2. If the project is not subject to CWHSSA, the employer will be notified of the possible FLSA overtime violations. Also, the contract administrator may refer the matter to the DOL for further review.
- h. **Computations.** If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.
- i. **Deductions.** If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

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

- j. **Fringe benefits.** If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the Statement of Compliance], the employer may be asked to submit correction certified payrolls and will be required to pay wage restitution if underpayments occurred. However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.
- k. **Signature.** If the payroll Statement of Compliance is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principle of the firm and that person has not been authorized by principle to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature of a principle or other authorized signatory.
- l. **On-site interview comparisons.** If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a correction certified payroll report.
- m. **Correction certified payroll.** Any and all changes to data on a submitted payroll report must be reported on a certified correction payroll. In no case will a payroll report be returned to the prime contractor or employer for revision.

## 2-8 **RESTITUTION FOR UNDERPAYMENT OF WAGES.**

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project, including wage restitution, must be reported on a certified payroll report.

- a. **Notification** to the Employer/Prime contractor. The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

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

- b. **Computing wage restitution.** Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.
- c. **Correction certified payrolls.** The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for wage restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount actually paid. A properly signed Statement of Compliance must accompany the correction payroll.

HUD no longer requires the signature of the employee on the correction payroll to evidence employee receipt of restitution payment. In addition, except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashiers, canceled or other), or employee-signed receipts or waivers.

- d. **Review of correction CPR.** The contract administrator will review the correction certified payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a correction certified payroll within 30 days.
- e. **Unfound workers.** Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers) providing their names, Social Security Numbers, last known addresses and the gross amount due. In such cases, at the end of the project the prime contractor will be required

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to place in a deposit or escrow account an amount equal to the total gross amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for 3 years after the completion of the project. After 3 years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD.

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## CHAPTER 3      LABOR STANDARDS DISPUTES, ADMINISTRATIVE REVIEWS, WITHHOLDING, DEPOSITS AND ESCROW ACCOUNTS, AND SANCTIONS

### WHAT HAPPENS WHEN THINGS GO WRONG?

#### 3-1      INTRODUCTION.

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

#### 3-2      ADMINISTRATIVE REVIEW ON LABOR STANDARDS DISPUTES.

As mentioned in the Introduction above, a dispute about labor standards and compliance can arise for a number of reasons. The labor standards clauses in your contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

- a. **Additional classifications and wage rates.** Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.
  1. **Reconsideration.** The DOL normally identifies the reasons for denial in its response to the request. Any interested person (for example, the contract administrator, employer, representatives of the employees) may request reconsideration of the decision on the additional classification request. The request for reconsideration must be made in writing and must thoroughly address the denial reasons identified by the DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to the DOL. (See 2-2(d), and also DOL Regulations 29 CFR 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through the HUD Headquarters Office of Labor Relations.

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

b. **Findings of underpayment.** Compliance reviews and other follow-up enforcement actions may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due and, of course, to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies.

If informal exchanges do not result in agreement, the final determination and schedule of back wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) or to request a hearing on the matter before the DOL. The request for hearing must be made in writing through the contract administrator and must explain what findings are in dispute and the reasons. In such cases, HUD is required to submit a report to DOL for review and further consideration. All requests for DOL hearing must be submitted through the HUD Headquarters Office of Labor Relations.

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

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

### **3-3 WITHHOLDING.**

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

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### 3-4 **DEPOSITS AND ESCROWS.**

In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow projects to proceed to final closing and final payments provided the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See 1-4, Responsibility of the Principal Contractor, and 2-8, Restitution for Underpayment of Wages.

- a. **Where the parties have agreed to amounts of wage restitution that are due** but the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages, e.g., some of the workers have moved and could not be located. The amount of the deposit is equal to the total gross amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who cannot be located are held in the deposit/escrow account for three years and disposed as described in 2-8(f) of this Guide.
- b. **Where underpayments are suspected or alleged and an investigation has not yet been completed.** The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor.

If the parties agree to the investigative findings, the amounts due to the workers will be paid by the employer. As these workers are paid and proper documentation is provided to the contract administrator, the gross amounts corresponding to the documented payments are returned to the depositor.

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

- 
2. If the employer is not cooperating in the resolution, the contract administrator shall make disbursements to the workers in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (See 2-8(f) and 3-4(a)).

If the parties do not agree and an administrative hearing is requested, the escrow will be maintained as explained in 3-4(c), below.

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

- c. **Where the parties are waiting for the outcome of an administrative hearing** that has been or will be requested contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

### **3-5 ADMINISTRATIVE SANCTIONS.**

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

- a. **DOL debarment.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (debarred) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or can be initiated by the DOL. Debarment proceedings are described in DOL regulations 29 CFR 5.12.
- b. **HUD sanctions.** HUD sanctions may include Limited Denials of Participation (LDPs), debarments and suspensions.
  1. **Limited Denial of Participation.** HUD may issue to the employer a limited denial of participation (LDP) which prohibits the employer from further participation in HUD programs for a period up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDP's are found at 24 CFR 24.700-24.714.

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

### **3-6 FALSIFICATION OF CERTIFIED PAYROLL REPORTS.**

Contractors and/or subcontractors that are found to have willfully falsified payroll reports (Statements of Compliance), including correction certified payroll reports, may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison for each false statement (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

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

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## ACRONYMS AND SYMBOLS

|          |   |
|----------|---|
| CDBG -   | Community Development Block Grant             |
| CFR -    | Code of Federal Regulations                   |
| CPR -    | Certified Payroll Report                      |
| CWHSSA - | Contract Work Hours and Safety Standards Act  |
| DBA -    | Davis-Bacon Act                               |
| DBRA -   | Davis-Bacon and Related Acts                  |
| DOL -    | Department of Labor                           |
| FHA -    | Federal Housing Administration                |
| FLSA -   | Fair Labor Standards Act                      |
| HUD -    | Housing and Urban Development (Department of) |
| IHA -    | Indian Housing Authority                      |
| LCA -    | Local Contracting Agency                      |
| LDP -    | Limited Denial of Participation               |
| O/T -    | Overtime                                      |
| PHA -    | Public Housing Agency                         |
| S/T -    | Straight-time                                 |
| SAC -    | State Apprenticeship Council/Agency           |
| TDHE -   | Tribally-Designated Housing Entity            |
| § -      | Section                                       |
| ¶ -      | Paragraph                                     |

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## DAVIS-BACON - RELATED WEB SITES\*

HUD Office of Labor Relations:  
[www.hud.gov/offices/olr](http://www.hud.gov/offices/olr)

HUD Regulations:  
<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

HUDClips (HUD Forms and Publications):  
[www.hud.gov/offices/adm/hudclips/index.cfm](http://www.hud.gov/offices/adm/hudclips/index.cfm)

DOL Davis-Bacon and Related Acts Homepage:  
<http://www.dol.gov/whd/contracts/dbra.htm>

DOL Regulations:  
<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Davis-Bacon Wage Decisions:  
[www.wdol.gov](http://www.wdol.gov)

DOL Forms:  
[www.dol.gov/whd/programs/dbra/forms.htm](http://www.dol.gov/whd/programs/dbra/forms.htm)

**\*Web addresses active as of January 2012**

|                                |   |  |
|--------------------------------|---|--|
| <b>Project Wage Rate Sheet</b> | U.S. Department of Housing and Urban Development<br>Office of Labor Relations |  |
|--------------------------------|---|--|

|               |   |
|---------------|---|
| Project Name: | Wage Decision Number/Modification Number: |
|---------------|---|

|                 |                 |
|-----------------|-----------------|
| Project Number: | Project County: |
|-----------------|-----------------|

| Work Classification          | Basic Hourly Rate (BHR) | Fringe Benefits | Total Hourly Wage Rate | Laborers Fringe Benefits       |            | \$                |
|------------------------------|-------------------------|-----------------|------------------------|--------------------------------|------------|-------------------|
|                              |                         |                 |                        | Group #                        | BHR        |                   |
| Bricklayers                  |                         |                 | \$                     | Group #                        | BHR        | Total Wage        |
| Carpenters                   |                         |                 | \$                     |                                |            | \$                |
| Cement Masons                |                         |                 | \$                     |                                |            | \$                |
| Drywall Hangers              |                         |                 | \$                     |                                |            | \$                |
| Electricians                 |                         |                 | \$                     |                                |            | \$                |
| Iron Workers                 |                         |                 | \$                     |                                |            | \$                |
| Painters                     |                         |                 | \$                     | Operators Fringe Benefits:     |            | \$                |
| Plumbers                     |                         |                 | \$                     | Group #                        | BHR        | Total Wage        |
| Roofers                      |                         |                 | \$                     |                                |            | \$                |
| Sheet Metal Workers          |                         |                 | \$                     |                                |            | \$                |
| Soft Floor Workers           |                         |                 | \$                     |                                |            | \$                |
| Tapers                       |                         |                 | \$                     |                                |            | \$                |
| Tile Setters                 |                         |                 | \$                     | Truck Drivers Fringe Benefits: |            | \$                |
| <b>Other Classifications</b> |                         |                 |                        | <b>Group #</b>                 | <b>BHR</b> | <b>Total Wage</b> |
|                              |                         |                 | \$                     |                                |            |                   |
|                              |                         |                 | \$                     |                                |            |                   |
|                              |                         |                 | \$                     |                                |            |                   |

**Additional Classifications (HUD Form 4230-A)**

| Work Classification | Basic Hourly Rate (BHR) | Fringe Benefits | Total Hourly Wage Rate | Date of HUD Submission to DOL | Date of DOL Approval |
|---------------------|-------------------------|-----------------|------------------------|-------------------------------|----------------------|
|                     |                         |                 | \$                     |                               |                      |
|                     |                         |                 | \$                     |                               |                      |
|                     |                         |                 | \$                     |                               |                      |



Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title) \_\_\_\_\_

do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ on the \_\_\_\_\_ (Building or Work) \_\_\_\_\_; that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
 (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS  
 — in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

| EXCEPTION (CRAFT) | EXPLANATION |
|-------------------|-------------|
|                   |             |
|                   |             |
|                   |             |
|                   |             |
|                   |             |
|                   |             |
|                   |             |
|                   |             |
|                   |             |

REMARKS:

|                |           |
|----------------|-----------|
| NAME AND TITLE | SIGNATURE |
|                |           |

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE



U.S. Department of Housing and Urban Development  
Office of Departmental Operations and Coordination  
Washington, DC 20410

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Email: [www.OfficeofLaborRelations@hud.gov](mailto:www.OfficeofLaborRelations@hud.gov)

**Labor Relations Desk Guide**  
**LR01.DG**



## Community Resources

### For Training & Employment:

#### TEXAS WORKFORCE COMMISSION

Employer's Hotline: 800-832-9394

#### Metrocrest Services

13801 Hutton Dr., Suite 150; Farmers Branch, Texas 75006

Phone: 972-446-2100 Fax: 214-694-2171

Email: [teubanks@metrocrestsocialservices.org](mailto:teubanks@metrocrestsocialservices.org)

Website: [www.metrocrestsocialservices.org](http://www.metrocrestsocialservices.org)

#### CHRISTIAN COMMUNITY ACTION (CCA)

200 South Mill Street, Lewisville, Texas 75057

Phone: 972-436-HELP/972-219-4330 fax

email: [info@ccahelps.org](mailto:info@ccahelps.org)

### Complaints?

To file a complaint for an alleged violation of Section 3:

Businesses or residents may file a written complaint with the Fort Worth

Regional HUD Office or mail it to:

The Assistant Secretary for Fair Housing and Equal Opportunity

ATTN: Office of Economic Opportunity

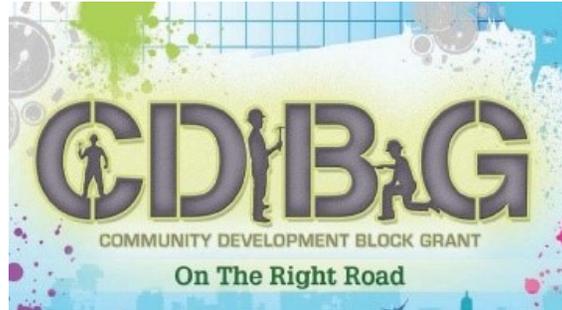
U.S. Department of Housing and

Urban Development

451 Seventh Street, S.W.

Room 5100

Washington, D.C. 20410-2000



### The Community Development Program

*"You don't have to move to live in a better neighborhood! Revitalizing neighborhoods through rebuilding infrastructure, housing rehabilitation and enhanced code enforcement".*



## CARROLLTON TEXAS

Where Connections Happen

# SECTION 3

A CDBG  
Contractor's  
Guide to  
Hiring &  
Contracting

City of Carrollton  
Environmental Services Division  
Community Development Program

1945 E. Jackson Rd.

Carrollton, TX 75006

Phone: 972-466-4299

Fax: 972-466-3175

[community.development@cityofcarrollton.com](mailto:community.development@cityofcarrollton.com)

## Background

Congress established the Section 3 through policy 24 CFR Part 135 as the legal basis for providing jobs for low-income persons and awarding contracts to businesses in areas receiving certain types of Federal Grants. As a recipient of the Community Development Block Grant (CDBG) sponsored by the U.S. Department of Housing and Urban Development the City is required to hire and contract with low-income persons on all federally funded projects. The City of Carrollton seeks to make good faith efforts to involve low-income residents and businesses in all phases of its procurement practices and to provide them equal opportunities to compete for new positions and contracts for construction.

### **What is Section 3?**

It is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency.

### **Who are Section 3 Residents?**

Residents of public housing, homeless persons and low income persons who live in the metropolitan area in which a HUD-assisted project is located. To qualify as a Section 3 person they must earn less than \$43,250 a year.

### **What is a Section 3 business?**

A business that meets the definition of a Section 3 business is one:

- That is 51% or more owned by low-income residents earning less than \$43,250 annually or that is located in a low income area
- Whose permanent full-time employees include persons, at least 30% of whom are currently low-income earning less than \$43,250 annually; or
- That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to a Section 3 business

### **Section 3 Business Registry:**

The City of Carrollton requires all contractors and subcontractors that qualify as a Section 3 business to register their business on-line. Using the link below, you can also navigate the online resources to identify potential Section 3 local subcontractors and vendors in Carrollton and surrounding cities.

[www.hud.gov/Sec3Biz](http://www.hud.gov/Sec3Biz)

The City recognizes the need for guidance in the process of hiring, contracting, and subcontracting low-income residents and businesses and offers any assistance per contractors' requests.

## Types of Opportunities:

### Examples in Construction

Architecture • Bricklaying • Carpentry  
Cement/Masonry • Demolition • Drywall  
Electrical • Engineering • Fencing • AC/  
Heating • Tile Setting • Bricklaying  
• Painting • Plastering • Plumbing •  
Surveying

- Contractors/Subcontractors are required, to the greatest extent feasible, to provide all types of employment opportunities to low-income residents, including seasonal and temporary employment, as well as long-term jobs.
- Employment goals are based on “new hires,” which are defined as full-time employees for permanent, temporary, or seasonal employment opportunities.
- Contractors are *encouraged* to provide long-term employment.
- At least 30% of the permanent, full-time employees hired should be low-income residents.
- After a Section 3 designated (low-income) employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30% requirement.

## **Getting Started CMBL & HUB Registration**

### ***Step 1 - Create A CMBL User Profile***

To register for the Centralized Master Bidders List (CMBL) to be a state vendor or to apply for HUB certification, a **My CPA** user account must be created with the Texas Comptrollers Office. This process can be started at: [www.comptroller.texas.gov/purchasing/vendor/registration](http://www.comptroller.texas.gov/purchasing/vendor/registration)

### ***Step 2 - Begin CMBL and/or HUB application process by establishing your State Vendor Account upon completion of establishing a MY CPA account***

If applying for CMBL, please note an annual registration fee of \$70.00 is required. After completing the registration process, an option of submitting the registration fee online with a credit/debit card or check/debit (U.S. addresses only), or mailing the payment in for processing.

If applying for HUB certification, please note the application must be notarized. Therefore, a prompt to print out the application and documentation checklist will occur at the end of the registration process. The notarized application and copies of the required documents on the checklist must be submitted to the Statewide HUB Program for evaluation and determination of the company's HUB eligibility. HUB certification is free of charge.

## **Important Resources For Registration and Compliance**

### **Federal System For Award Management (SAM)**

[www.sam.gov](http://www.sam.gov)

### **D-U-N-S Registration**

[www.fedgov.dnb.com/webform](http://www.fedgov.dnb.com/webform)

### **Historically Underutilized Business (HUB) Registration**

[www.comptroller.texas.gov/  
purchasing/vendor/registration/](http://www.comptroller.texas.gov/purchasing/vendor/registration/)

#### **CONTACT INFORMATION**

Environmental Services

Community Development Program

1945 E. Jackson Rd.  
Carrollton, TX 75006

972-466-5727

[communitydevelopment@cityofcarrollton.com](mailto:communitydevelopment@cityofcarrollton.com)



**CARROLLTON**  
TEXAS

*Where Connections Happen*

Contractor  
Registration  
Requirements for  
CDBG/Federal  
Government  
Projects

City of Carrollton

1945 E. Jackson Rd.

Carrollton, TX 75006

## **Contractor Registration Requirements for Federal Projects**

As a recipient of the Community Development Block Grant (CDBG) sponsored from the U.S. Department of Housing and Urban Development, it is the policy of the City of Carrollton to require contractors and their subcontractors have an active registration with the **System for Award Management (SAM) system**. The SAM is an official website of the U.S. government to verify eligibility of a contractor to receive federal funds. There is no cost to register. The following information is needed to register with SAM.

- Your DUNS Number, a unique nine-digit identification number for each physical location of your business.
- Legal Business Name, and Physical Address from your Dun & Bradstreet (D&B) record.

If you do not have a DUNS number, you can request one at no cost by visiting: <https://fedgov.dnb.com/webform>. You will need the following information to apply:

- Your Taxpayer Identification Number (TIN) and Taxpayer Name associated with your TIN.
- Your bank's routing number, your bank account number, and your bank account type, i.e. checking or savings, to set up Electronic Funds Transfer (EFT).
- Annual sale revenue
- Number of employees

## **Historically Underutilized Businesses (HUB)**

The City of Carrollton is constantly looking to work with businesses certified as Historically Underutilized Businesses (HUB). The goal of this good-faith effort is to actively involve HUBs in the City's procurement process. Although not required it is highly recommended to register as a HUB if your business qualifies.

### ***Who Qualifies to be a HUB?***

Qualifications to be classified as a HUB vendor can be found in the Texas Administrative Code (TAC) Title 34, Section 20.11. By visiting:

[http://txrules.elaws.us/rule/title34\\_chapter20\\_sec.20.11](http://txrules.elaws.us/rule/title34_chapter20_sec.20.11) a company or business can review the definition of a Historically Underutilized Business (HUB) to determine if the requirements apply to the company or business.

### ***What are the Benefits of HUB certification?***

- HUB certification is free of charge and valid for up to four years, provided the business continues to meet the eligibility requirements.\*
- Only certified HUBs are listed in the online Texas HUB Directory. State agencies use the HUB Directory in conjunction with the Comptroller's Centralized Master Bidders List (CMBL) to solicit bids from certified HUBs for state purchasing and public works contracts. Prime contractors also use the HUB Directory to identify HUB's they can notify of upcoming contracting opportunities.

- The Texas HUB Directory is also searched by vendors looking for certified HUBs to include in contracting plans for projects of \$100,000 or more.

*\*Vendors may also receive HUB certification by way of a certification memorandum of agreement the Statewide HUB Program has entered into with other local governments or nonprofit organizations*

### ***Requirements for HUB registration***

- An Employer Identification Number (EIN) issued by the IRS is required for registration.
- To obtain an EIN number, go to the IRS website: [www.IRS.gov/businesses](http://www.IRS.gov/businesses). International applicants should contact IRS at 267-941-1099. A Form SS-4 may be filled out and either FAXed or mailed to the IRS. The following website lists instructions on FAX numbers and mailing address: <https://www.irs.gov/filing/where-to-file-your-taxes-for-form-ss-4>
- The Comptroller's office takes a proactive approach in the prevention of identity theft and does not accept social security numbers for registration.
- Your company business structure and ownership details.
- The list of purchasing class and item codes closest to the actual product or service which can be provided.
- The relevant Texas highway district(s) where your products or services are available/deliverable.



### Suspension/Debarment Certification

Project: N.O.T.I.C.E. PY 2018 CROSBY TOT LOT

Prepared by: City of Carrollton

Date: \_\_\_\_\_

#### Introduction

The contractor and all subcontractors shall register with the Federal System For Award Management (SAM) prior to awarding of the bid to ensure the CONTRACTOR and any SUBCONTRACTOR is eligible to perform services for projects funded by the U.S. Government.

The following link will provide direct you to registration with SAM: <https://www.sam.gov>

To register with the SAM system you will also need a Dun & Bradstreet, or D-U-N-S, Number, a unique nine-digit identification number for each physical location of your business. D-U-N-S Number assignment is free for all businesses required to register with the federal government for contracts or grants.

You can apply for your free D-U-N-S number at: <https://fedgov.dnb.com/webform>

The Suspension/Debarment Certification consist of the responsible department comparing the following contractor information against HUD's debarred list (available on the Internet at [www.SAM.gov](http://www.SAM.gov) or in OCD) and documenting the clearance or rejection of the contractor. By execution of this form, the contractor, subcontractor, or vendor is certifying that the organization and its owner(s) and principals are not suspended or debarred from participation in any HUD-funded contract.

D-U-N-S Number: \_\_\_\_\_

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Sole Proprietorship: \_\_\_\_\_  
(List sole owner):

Partnership: \_\_\_\_\_  
(List all partners):

Corporation–  
(List names of all  
principals and  
their titles)

PRES: \_\_\_\_\_

V-P: \_\_\_\_\_

SEC.-TREAS: \_\_\_\_\_

Signature of Owner or Principal:

\_\_\_\_\_  
(Contractor, Subcontractor, or Vendor) Date: \_\_\_\_\_

I hereby certify that by the completion of this form that the City of Carrollton has fully complied with the requirements of 24 CFR Part 85.35 and OMB Circular A-133 pertaining to **not using** suspended or debarred contractors to conduct DOE-funded projects.

Signature of Certifying Officer:

\_\_\_\_\_  
Tanya Ferencak Date: \_\_\_\_\_  
(Sr. Community Development Specialist)

# REFERENCES

Please list at least three references of governments, individuals or companies that have used your playground equipment and installation concrete replacement services. Use additional pages as needed. Additional consideration will be given to governmental references.

1. \_\_\_\_\_  
COMPANY NAME OR CONTACT PERSON

\_\_\_\_\_

|                |      |       |     |
|----------------|------|-------|-----|
| STREET ADDRESS | CITY | STATE | ZIP |
|----------------|------|-------|-----|

\_\_\_\_\_

|                |                  |
|----------------|------------------|
| CONTACT PERSON | TELEPHONE NUMBER |
|----------------|------------------|

\_\_\_\_\_

PRODUCTS/SERVICES USED

2. \_\_\_\_\_  
COMPANY NAME OR CONTACT PERSON

\_\_\_\_\_

|                |      |       |     |
|----------------|------|-------|-----|
| STREET ADDRESS | CITY | STATE | ZIP |
|----------------|------|-------|-----|

\_\_\_\_\_

|                |                  |
|----------------|------------------|
| CONTACT PERSON | TELEPHONE NUMBER |
|----------------|------------------|

\_\_\_\_\_

PRODUCTS/SERVICES USED

3. \_\_\_\_\_  
COMPANY NAME OR CONTACT PERSON

\_\_\_\_\_

|                |      |       |     |
|----------------|------|-------|-----|
| STREET ADDRESS | CITY | STATE | ZIP |
|----------------|------|-------|-----|

\_\_\_\_\_

|                |                  |
|----------------|------------------|
| CONTACT PERSON | TELEPHONE NUMBER |
|----------------|------------------|

\_\_\_\_\_

PRODUCTS/SERVICES USED

## CONFLICT OF INTEREST QUESTIONNAIRE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code went into effect which requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the City Secretary of the City of Carrollton not less than the 7<sup>th</sup> business day after the person becomes aware of facts that require the statement to be filed.

A recent amendment to this state law that went into effect on September 1, 2007 now allows for two changes to the original statute:

1. The Conflict of Interest Questionnaire only needs to be filled out and returned with your bid if you or your company are aware of a conflict, and,
2. If the amount of the conflict exceeds \$2,500

It is the responsibility of every vendor filling out and returning this bid to determine if there is a conflict meeting the parameters listed above. If so, **the City of Carrollton requires that this Questionnaire be completed and turned in with your bid.** If there is no conflict, or if the amount of the conflict is less than \$2,500, then you are not required to submit the Questionnaire with your bid.

See Section 176.006, Local Government Code which reads "A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor."

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7<sup>th</sup> business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An Offense under this section is a Class C misdemeanor.

### OFFICE USE ONLY

Date Received

**1** Name of person doing business with local governmental entity.

**2**

Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3** Name each employee or contractor of the local government entity who makes recommendations to a local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.

**4** Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.

# CONFLICT OF INTEREST QUESTIONNAIRE

**FORM CIQ**

Page 2

**For vendor or other person doing business with local governmental entity**

**5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

Yes

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government Officer named in this section AND the taxable income is not from the local governmental entity?

Yes

No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves As an officer or director, or holds an ownership of 10 percent or more?

Yes

No

D. Describe each affiliation or business relationship.

**6**

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

## CERTIFICATE OF INTERESTED PARTIES

### CERTIFICATE OF INTERESTED PARTIES

A new law in the state of Texas went into effect on January 1, 2016, which requires your firm to submit a Form 1295 (Certificate of Interested Parties attached) through the Texas Ethics Commission's website, and a notarized original form as printed from the website to the Town prior to approval of the contract. More information can be found at the following link:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

[https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html)

**Once bid evaluations take place by city staff, you will be notified that an award to your company is pending and that this form is mandatory. You will need to provide this form to the city before City Council approval can be considered.**

**You can fill out the form online, get a certificate number, and that number goes in the upper right box.**

**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY**

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

| 4<br>Name of Interested Party | City, State, Country<br>(place of business) | Nature of Interest (check applicable) |              |
|-------------------------------|---|---------------------------------------|--------------|
|                               |   | Controlling                           | Intermediary |
|                               |   |                                       |              |
|                               |   |                                       |              |
|                               |   |                                       |              |
|                               |   |                                       |              |
|                               |   |                                       |              |
|                               |   |                                       |              |
|                               |   |                                       |              |
|                               |   |                                       |              |

5 Check only if there is NO Interested Party.

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address: \_\_\_\_\_ (street) \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 (month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**

**CITY OF CARROLLTON, TEXAS**

**CONTRACT AGREEMENT**

STATE OF TEXAS            )

COUNTY OF DALLAS    )

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2018, by and between the City of Carrollton, a municipal corporation, located in the County of Dallas and State of Texas, acting through Beth Bormann, its Assistant City Manager, thereunto authorized so to do hereafter termed OWNER, and \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_ hereinafter termed CONTRACTOR.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, and under the conditions expressed in the bond bearing even date herewith, the said CONTRACTOR, hereby agrees with the OWNER to commence and complete the construction of certain improvements described as follows:

**18-032 RFP FOR CROSBY REC CENTER PLAYGROUND**

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at CONTRACTOR’S own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda thereof, together with the CONTRACTOR'S written proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date of written notice to do so shall have been given him, and to be 100% complete within \_\_\_\_\_ ( ) working days after the date of the written Notice to Proceed work, subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the Contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day above written.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

Chrystal Davis, Asst. City Manager

By: \_\_\_\_\_

(Print or Type Name)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Laurie Garber, City Secretary

\_\_\_\_\_

Date: \_\_\_\_\_

By Authority of Council Action Dated

Signature: \_\_\_\_\_

Approved as to Content:

\_\_\_\_\_  
Kim Bybee, Parks Manager