

SECTION VIII. LABOR & CONSTRUCTION STANDARDS

Federal and State Laws govern the wages and working conditions for laborers and mechanics employed under construction contracts funded with State CDBG funds. The application of all Federal and State labor laws is prevalent throughout the entire construction process and not specific to just one component. This section on Labor and Construction is divided into four subsections:

- applicable state and federal acts,
- grantee responsibilities prior to the awarding of a construction contract,
- grantee responsibilities during the construction phase of the contract, and
- closeout.

All contracts for construction, alteration, rehabilitation, or repair **FUNDED IN WHOLE OR IN PART** with State CDBG funds, including grant funds passed through to private firms, are subject to federal labor standards. All monies involved in a project, whether State, federal or private funds, are subject to the following labor standards if State CDBG funds are used for some part of a construction project.

It is extremely important for all grantees involved in construction projects to understand the application of these requirements to their projects and assign one person the responsibility for ensuring compliance with them. The grantee must develop compliance procedures so that it will not violate the law.

APPLICABLE STATE & FEDERAL LAWS

Listed below are brief descriptions of the state and federal acts that apply to project contracts involving public facilities and public works. Additional guidance can be obtained from your state project monitor.

1. DAVIS-BACON AND RELATED ACTS (40 USC 276(a) - 276(a)-7)

Mechanics and laborers employed in construction work financed in whole or in part with Federal assistance, including State CDBG assistance, must be paid wages and fringe benefits equal to those of corresponding classes of workers on similar construction in the area in which the work is performed, as determined by the U.S. Department of Labor.

Applicable wage decisions must be incorporated in the prime construction contract, in all subcontracts, and in any lower-tier subcontracts. For negotiated contracts, the lock-in date for a wage decision is the date the contract is awarded or construction starts, whichever occurs first. **(With CDBG projects, most contracts are competitively bid.)**

For competitively bid projects, a wage decision is locked-in at bid opening. The wage decision which is used in the bid specifications may be modified prior to bid opening. If this is the case, the modified wage decision must be used. There is one exception to this rule – if the modification was issued 10 days prior to bid opening, the grantee must certify they were unable to notify all bidders of the modified decision, then the decision used in the bid specifications package may be used. In addition, **the contract must be awarded within 90 days of bid opening.** If the contract is awarded on the 91st day or later after the bid-opening date, the grantee is required to update the wage decision. If the wage decision has been modified, the new wage decision must be incorporated into the contract document.

There are **SEVERAL TYPES OF WORK WHICH ARE EXEMPT** from Davis-Bacon prevailing wage rate provisions. These are discussed in the next subsection.

2. COPELAND "ANTI-KICKBACK" ACT (40 USC 276c)

Wage "kickbacks" and salary deductions other than those prescribed by law (e.g. tax withholding and FICA) or those voluntarily authorized by the wage earner are prohibited.

Copeland applies to all federally assisted (including State CDBG assisted) contracts subject to Davis-Bacon wage standards. The Act also provides for the submission of weekly statements of compliance and weekly payrolls by all contractors in an approved format.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 USC 327-332)

Workers on federally assisted (including State CDBG assisted) construction projects **must be compensated for overtime and be provided safe and healthy working conditions**. CWHSSA applies to all construction contracts for projects over \$100,000. Financial assistance which is in the form of a loan guarantee or loan insurance is exempt from this requirement.

CWHSSA also holds the contractor and subcontractor(s) liable to workers as a result of overtime violations. The law also permits liquidated damages to be assessed in the amount of \$10,00 per day, per violation payable to the U.S. Treasury.

4. FAIR LABOR STANDARDS ACT (FLSA) (29 USC 102 et seq)

The FLSA provides for minimum wages, record keeping, overtime pay (forty-hour work week), and child labor standards.

5. REVIEW PROCESS FOR WATER WORKS AND WASTEWATER PROJECTS

The Water Quality Control Division within the State Department of Health must review and approve all plans and specifications for new water works and wastewater projects or for improvements or modifications to existing water and wastewater works prior to construction.

6. MINIMUM WAGE (8-16-101 CRS 1973, as amended)

This State law requires contracts over \$5,000 involving the employment of laborers or mechanics in the construction, alteration or repair of any building or public work, with certain exceptions, pay not less than the prevailing rate of wages of a similar nature in the town, city, village or other civil subdivisions of the State in which the building or other public work is located.

7. DISCRIMINATION AND AFFIRMATIVE ACTION (24-34-402 CRS, 1973 as amended)

This State law requires contracts to comply with the Colorado Anti-discrimination Act of 1957 and other applicable law regarding discrimination, unfair employment practices and Equal Opportunity and Affirmative Action.

8. COLORADO LABOR PREFERENCE (8-17-101 & 102 CRS 1973, as amended)

Provides that Colorado labor is preferred for public works contracts within the State which are financed in whole or in part by State funds. The Special Provisions Section of the grant contract between the State and recipient outline the above provisions as well as other applicable requirements.

9. PROCUREMENT STANDARDS

The **Financial Management Section of this Guide, Section II**, outlines required procedures for selection and award of contracts funded in whole or in part by federal funds. These procedures are designed to:

- avoid unnecessary or duplication of purchases;
- obtain favorable prices for goods and services without sacrificing quality;
- ensure maximum open and free competition; and,
- promote national goals related to equal employment opportunity and affirmative action.

10. BONDING AND INSURANCE: State statutes establish bonding requirements for grants.

These include:

- a bid guarantee from each bidder equivalent to five percent (5%) of the bid price;
- a performance bond on the part of the contract for at least fifty percent (50%) of the contract price (although the Department recommends a hundred percent (100%) performance bond); and,
- a payment bond on the part of the contractor for a hundred percent (100%) of the contract price, **see EXHIBIT VIII-M**.

11. SECTION 3: LOCAL EMPLOYMENT, TRAINING AND CONTRACTING (Housing & Urban Development Act of 1968, as amended)

Section 3 Projects. For grantees receiving CDBG funds in which the **total project costs exceed \$200,000**, a Section 3 report must be prepared and submitted annually as long as the project remains open. The reporting format and definitions used for Section 3 are contained in **Exhibit V-E**.

Section 3 of the Housing and Urban Development Act of 1968 requires, to the greatest extent feasible, that: 1) opportunities for training and employment be given to lower income residents of the project area; and 2) contracts for work in connection with the project be awarded to businesses which are located in, or owned in substantial part by persons residing in the project area. ("Project area" means the unit of local government or the metropolitan area or nonmetropolitan county.)

This means that ALL PROJECTS using CDBG funds should perform certain actions which include :

- notifying Section 3 residents and contractors about training, employment and contracting opportunities,
- including the Section 3 clause in all solicitations and contracts, **(See Section VIII Exhibit J, Page VIII-J-17, #56, Section 3 Clause)**
- taking affirmative actions which will facilitate the training and employment of Section 3 residents and award compliance of contractors and subcontractors and refrain from entering into any contract with a contractor known to have violated the requirements of Section 3,
- obtaining compliance of contractors and refraining from entering into any contract with a contractor known to have violated the requirements of Section 3,
- documenting the actions taken to implement Section 3 requirements, the results of such actions and the impediments to implementing Section 3,
- reporting these actions annually to the Department of Local Affairs as long as the project remains open IF the project is considered a "Section 3 project" as described above.

GRANTEE RESPONSIBILITIES PRIOR TO AWARDING A CONSTRUCTION CONTRACT

1. Engineering and/or Architectural Design and Specifications Preparation

If the grantee is utilizing an architect and/or engineer, the grantee should follow the instructions in **Section II** of this Guide, "Procurement Standards-Competitive Negotiation", for selecting an engineer or architect.

The contract between the engineer/architect and the grantee should be as specific as possible. In particular, the contract should contain a listing of products and services (maps, drawings) that will be provided by the architect or engineer. An example of such a contract is contained in **EXHIBIT A**.

NOTE: "Design-Build" contracts are not generally used in the CDBG Program. Contact your project monitor if you are interested in seeing if this method will work for your project.

2. Complete the Water Works & Wastewater Projects Review Process

The Water Quality Control Division within the Department of Health must review and approve all plans and specifications for new water works and wastewater projects or for improvements or modifications to existing water and wastewater works prior to construction. Information must be submitted to this Division a minimum of forty-five (45) days prior to letting bids for construction. **See EXHIBIT VIII-B.**

3. Determine Davis-Bacon Applicability

The grantee **should assume** that its construction project **is covered** by Davis-Bacon prevailing wage rate provisions. If the grantee believes that its project or a part thereof is exempt, the grantee should prepare a written statement detailing the reasons for exemption, **see EXHIBIT VIII-C**. The statement should be maintained in the grantee's labor standards file and a copy sent to the state office. **If the grantee has questions about the applicability of federal labor standards provisions, contact Lucia Smead or Teri Davis, Department of Local Affairs, 1313 Sherman Street, Room 521, Denver, CO 80203 or your state Project Monitor.**

4. Determine Davis-Bacon Prevailing Wage Rates

If the project **is not exempt** from Davis-Bacon provisions, the grantee should take the following actions:

- The GRANTEE **may be** required to complete U.S. Department of Labor Form 308, "**Request for Determination and Response to Request**" **if there is not an existing wage decision in effect. See EXHIBIT VIII-D.** Prior to completing and submitting this form, call Teri Davis or Lucia Smead for assistance.
- Send the completed form to Lucia Smead or Teri Davis, Department of Local Affairs, 1313 Sherman Street, Room 521, Denver, CO 80203 **at least 60 days before** grantee needs the information (i.e., before grantee advertises for bids).
- If additional classifications are required, either because of changes in the project or because the U.S. Department of Labor did not respond fully to all classifications listed on Form 308, the grantee should complete a "**Report of Additional Classification and Rate**", **see EXHIBIT VIII-E – be sure to read the instructions.** This report should be sent to Lucia Smead or Teri Davis.
- **Lock-in at bid opening provided contract is awarded within 90 days**
 - Must update wage decision if contract is awarded more than 90 days after bid opening
- Modifications published <10 days before bid opening must be used. The grantee is not required to update the bid package **only if** there is insufficient time to notify all bidders and the

grantee certifies that it was unable to notify the bidders of the modification. An attempt to notify bidders of the wage modification must be made.

The governing regulations for laws on labor standards provide for specific language to be included in all solicitations for bids and contracts for projects receiving federal financial assistance. A Sample Contract is available in Exhibit VIII-J.

Visit the Office of Labor Relations on the HUD home page at: <http://www.hud.gov/offices/olr> for more information.

5. Bid Preparation & Processing

Before inviting bids on any contract, the grantee should take the following steps to ensure that the bid package contains all the relevant information that bidders will need to respond adequately.

- The architect/engineer should provide the grantee with a set of drawings and specifications for the construction project including an accurate and clear description of the technical requirements of the project and, if applicable, a certification that the design takes into account requirements of the Architectural Barriers Act related to accessibility by handicapped persons. The Architect's Certification, **EXHIBIT VIII-F**, must be consigned by a city official and included in the contract file. **A COPY OF THE BID PACKAGE SHOULD BE SENT TO YOUR STATE PROJECT MONITOR.** Finally, the plans and drawings must be stamped by an architect/engineer registered or licensed by the State of Colorado.
- Acquire any property, easements, or rights-of-way that might be required for construction of the public facility, **EXHIBIT VIII-G**.
- Obtain information from local public utilities regarding underground installations. The grantee should request a map of the project site which will be included in the bid package. The request should contain a cut-off date for response (generally 30 days) after which the grantee would not be held liable for damages to underground facilities.
- Determine the cost and pricing format. Contracts may be either lump sum or unit priced. **"COST PLUS" CONTRACTS MAY NOT BE USED.** The grantee should consider, at this point, whether or not it wishes to include "deductible alternatives" in the pricing format for the contract.

A. Bid Package Preparation

Solicitation of bids and the awarding of contracts for construction, alteration or rehabilitation of public works projects, public facilities, and large housing projects are governed by a set of laws requiring that:

- Contractors pay mechanics and laborers at a rate equal or greater to that paid to workers on similar activities in the area. These Davis-Bacon "prevailing wage rates" are determined by the U.S. Department of Labor.
- Workers are paid at regularly scheduled intervals (at least once a week) and only deductions allowable by law or authorized by the employee are taken out of the worker's gross pay.
- Workers receive overtime compensation at a rate of at least one and one-half (1.5) times their regularly hourly wage for any work performed in excess of forty (40) hours per week.
- Workers are assured of safe and healthy working conditions.

The bid package must include all applicable portions of EXHIBITS VIII-B through VIII-P, and at the very least includes the following items:

- Invitation for Bids, **EXHIBIT VIII-H**.
- Information on the method of bidding, process by which the bids will be evaluated, and the method of contract award, **EXHIBIT VIII-I**.
- Contract Documents, **EXHIBIT VIII-J**.
- Bid Proposal Form-Lump Sum, **EXHIBIT VIII-K**, or Bid Proposal Form-Unit Price, **EXHIBIT VIII-L**.
- Bid Bond Form, **EXHIBIT VIII-M**.
- Information on Performance and Payment Bond Requirements, **EXHIBIT VIII-N**.
- Contractor and Subcontractor Certifications, **EXHIBIT VIII-O**.
- The **wage rate determinations and Labor Standards Provisions must be included** in any solicitation for bids, **EXHIBIT VIII-D**.

Once the complete bid package has been assembled, IT IS RECOMMENDED, BUT NOT REQUIRED THAT THE BID PACKAGE BE REVIEWED AND APPROVED BY YOUR ATTORNEY.

B. Bid Advertisement

An advertisement of the bid should be drafted based on the information in the "Invitation for Bid", **EXHIBIT VIII-H**. The advertisement should be:

- published twice in a general circulation newspaper
- **allow at least 15 days** for response by bidders. (The response period may be extended in instances where the project is complex and requires additional time for preparation of bids.)

Any amendments to the bid package must be mailed to each bidder, and every bidder must be given an appropriate period of time to respond to the amendments.

C. Bid Logging

Upon receipt by the grantee, each bid should be logged by time and date of receipt and offerer. The bids should remain sealed and safely stored until the bid opening. A copy of the log should be kept in the contract file.

D. Bid Opening

The Bid Opening should be conducted in a businesslike manner with each bid being read aloud. The **APPARENT** low bid bidder will be determined at this time.

In the event that all bids exceed the amount of funds available for the construction project, the grantee has three options:

- seek additional financing resources such as general revenues or bond proceeds;
- use "deductible alternatives," identified in the bid package; or,
- modify the bid package and repeat the entire bid process as outlined above. **UNDER NO CIRCUMSTANCES CAN THE GRANTEE NEGOTIATE WITH THE LOW BIDDER TO BRING THE OFFER IN LINE WITH THE PROJECT BUDGET.**

Where the grantee chooses the "deductible alternatives" approach, **each bid** should be reevaluated based on the modified scope of goods and services to be provided. The grantee must, however, be careful not to significantly alter the program benefits when using this approach, as the grant was awarded based on the level of program benefits identified in the CDBG application.

E. Review Low Bidder & Bidder Eligibility (Debarment check)

Following the bid opening the low bid should be reviewed to ensure that the bid submission was technically and legally responsive to the solicitation for bids, that the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled, that the prime contractor does not appear on the current "GSA's List Parties Excluded From Federal Procurement or Nonprocurement Programs".

Prior to executing any construction contract/s, the **grantee is required to verify that any or all of its proposed contractors and subcontractors are not debarred, suspended or ineligible to participate in a federally funded project.** Should any contractor/subcontractor fall into one of the three categories, it is not eligible to participate in the CDBG funded project. The grantee should use **EXHIBIT VIII-P "Contractor's Certification"** form for the verification process.

If the low bidder proves to be unsatisfactory for any reason, and the grantee chooses to use the next lowest bidder, a statement of justification should be sent to the low bidder and a copy should be retained in the contract file.

GRANTEE RESPONSIBILITIES DURING THE CONSTRUCTION PHASE

The grantee assumes responsibility for the following activities during the construction phase of a CDBG construction contract:

- Issuance of a Contract Award
- Notify the Project Monitor and Department of Local Affairs staff of the Bid Opening Date, Contract Award and Amount and Preconstruction Conference Date. **(Exhibit VIII-Q)**
- Development & Execution of the Construction Contract
- Holding the Preconstruction Conference (Exhibit VIII-W)
- Issue Notice to Proceed (Exhibit VIII-R)
- Monitoring Contractor Performance
- Investigating Possible Labor Standards Violations
- Maintain Labor Standards Files

1. Contract Award Procedures

AN ENVIRONMENTAL REVIEW MUST BE COMPLETED BY THE GRANTEE AND A RELEASE OF FUNDS MUST BE OBTAINED FROM THE STATE PRIOR TO SIGNING ANY CONSTRUCTION CONTRACT. The grantee should make the contract award as soon as possible after identifying the low bidder. **EXHIBIT VIII-Q** provides an example of a Form for the Notice of Contract Award. This is usually done within 30 days of the bid opening unless: total funds are not yet available; the grantee has not completed its Environmental Review and received a Release of Funds from the state; or the project requires some legislative action.

2. Development & Execution of the Construction Contract

The contract should consist of an executed contract document as contained in **EXHIBIT VIII-J** with the following additional attachments: all Items Included in the Bid Package; Contractor's Bid Proposal; Contractor Certifications; Bond and Insurance Forms, and any amendments to the bid package.

3. Hold Preconstruction Conference

The preconstruction conference should be held immediately following the contract award by notifying the contractor (see **EXHIBIT VIII-Q.**) The following people should attend the pre-construction conference: the prime contractor; his/her foreman or construction superintendent; the person on his/her staff who will be preparing payrolls; representatives of all identified subcontractors; and, representatives of telephone and public utilities companies. At the pre-construction conference, you should:

- Explain to the contractors their responsibilities with respect to Labor Standards and Equal Opportunity requirements as well as the technical job requirements.
- Explain to the contractors their responsibilities with respect to Section 3 requirements. For more information, see Section V - Civil Rights.
- Explain that the contractor must submit payrolls, (only weekly or bi-weekly payrolls are acceptable) **EXHIBIT VIII-S**, and Statements of Compliance, **EXHIBIT VIII-T**, *signed by an officer of the company* and that the prime contractor is responsible for securing payrolls and Statements of Compliance from all subcontractors.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract.
- Indicate that copies of the Davis-Bacon Wage Rate Decision, Wage Rate Notice related to prevailing wages, EEO related to Executive Order 11246, and Notice to Employees, **EXHIBIT VIII-U**, **must be posted on the job site.**
- Explain that apprentice rates cannot be paid unless the apprentice program is certified by either the State Bureau of Apprenticeship and Training within the State Division of Labor or the regional office of the federal Department of Labor. If apprentices are to be used, the contractor must, therefore, provide you with a copy of the certification of his/her program.
- Explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Work Hours and Safety Standards law.
- Indicate that failure to pay workers at least time and a half each time they work in excess of 40 hours in one week violates the Work Hours and Safety Standards law and restitution must be made. Failure to pay correct wages should result in the contractor's payments being withheld.
- Explain that no payroll deductions can be made that are not specifically provided for in either the wage rate decision or the Copeland Anti-kickback provisions. Any deductions, other than these, are permissible only with the express consent of the Secretary of Labor. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kick back" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions should be treated as a serious discrepancy and should be resolved prior to contractor payments.
- Explain that employee interviews will be made, **EXHIBIT VIII-V.**
- Explain that debarment proceedings may be held if contractor is found to be in violation of Labor Standards and Equal Opportunity requirements.
- Describe the compliance review that you will undertake and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making payment to the contractor. **Labor Standards provisions are as legally binding as the technical specifications.** Failure to pay specified wages should result in contractor payments being withheld until all such discrepancies are resolved.

- Regarding equal opportunity, you should use the preconstruction conference to correct any equal opportunity deficiencies such as certificates of compliance.
- Explain contractor and subcontractor responsibilities regarding equal opportunity and correct any deficiencies that have developed to this point -- any subcontractors not identified in the bid should provide that data necessary to verify eligibility, and sign required certifications. The objective is to have everything in order at the conclusion of the preconstruction conference.

At the preconstruction conference, a discussion should be held on construction time tables, pay requests, change orders, utilities, construction staking and other construction items.

At the conclusion of the preconstruction conference, **you must prepare a preconstruction conference report which is basically minutes of the meeting.** Minutes of the pre-construction conference should be placed in the contract file and cross-referenced in the civil rights and labor standards files.

A Preconstruction Checklist for Contractors may be used by the contractor as a guide to meeting the labor standard requirements, **EXHIBIT VIII-W.**

4. A Notice To Proceed Issuance

Upon execution of the contract and holding the pre-construction conference, the grantee may then provide the prime contractor(s) with a **Notice to Proceed, EXHIBIT VIII-R.** This Notice establishes the construction starting date, the estimated date of completion, and the basis for assessing liquidated damages.

In the event a contractor is unable to complete a construction project, the grantee may assess the contractor for the costs the grantee must incur in order to complete the project. This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts to subsequent contractors to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the contract document.

A COPY OF THE NOTICE TO PROCEED MUST BE SENT TO YOUR ASSIGNED STATE PROJECT MONITOR. Additionally, THE STATE PROJECT MONITOR SHOULD RECEIVE WRITTEN NOTICE OF THE DATE WHICH CONSTRUCTION ACTUALLY STARTED. These dates become part of your permanent Labor Standards file and are important. All payrolls must be kept on file and must start from the date the construction started.

5. Monitoring Contractor Performance

Throughout the construction period, the grantee must monitor the contractor for both performance in line with the project's technical specifications and for compliance with all federal, state, and local standards.

Performance monitoring should also be done by the architect or engineer. The performance monitoring should consist of the following elements:

- **General Supervision:** Includes identifying the need for any construction adjustments and preparation of contract amendments. Also, involves on-going monitoring of the estimated schedule for completion.
- **Quality Control:** To ensure compliance with technical specifications and conformance with codes and standards and to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications.
- **Davis Bacon / Labor Standards Provisions:** On site inspections to ensure that all required notices have been posted. These notices include Notice to Employees, **EXHIBIT VIII-U,** and a copy of the wage determination. **WEEKLY COMPARISONS OF PAYROLL REPORTS, EXHIBIT VIII-S** (the state recommends that contractors and subcontractors use this form) and a **Statement of Compliance Form, EXHIBIT VIII-T,** are included to assist you in monitoring. **All contractors and subcontractors must submit payroll forms WEEKLY to the grantee for review.** Grantees must ascertain that

workers are being paid properly and in accordance with the prevailing wage rate and with information gathered in on-site interviews, **EXHIBIT VIII-V**. On-site interviews with construction employees must be conducted at least once a month and with a minimum of at least 10 percent of each job classification in the work force.

- **Certification of Pay Estimates:** To be used by the fiscal officer to verify estimated costs for partial payments. The architect or engineer should also obtain evidence that the contractor has made partial payments to any subcontractors.

In instances where the project was awarded based on a fixed price bid, the grantee may want the contractor to prepare a cost breakdown showing the amount of funding associated with each element of the construction contract.

This information can be used by the architect or engineer for performance monitoring and by the local CDBG fiscal officer for determining the accuracy of requests for payments.

Partial payments MAY be made up to 95 percent of the total amount of compensation in the contract. The remaining five percent is held by the state pending the final inspection and acceptance of work, final reports and final monitoring.

Grantees sometimes fail to meet all of the requirements of the law. Common errors, which the grantee should avoid, include:

- Failure to include Labor Standards provisions in bid specifications/contracts
- Use of incorrect or out-dated wage and rate determinations . Wage rates are not properly “locked-in”)
- Failure to award contract within 90 days of bid opening. If this occurs, wage decisions need to be re-checked and locked in.
- Failure to obtain verification of contractor/subcontractor eligibility (debarment check)
- Failure to obtain Certification of Contractors and subcontractors with Davis-Bacon
- Labor Standards File not established
- Weekly payrolls not obtained
- Weekly payrolls not checked
- On-site interviews not checked against payroll

6. Investigate Possible Labor Standards Violations

Violations of labor standards requirements may surface as the result of either monitoring by the grantee, monitoring by the State, or through a specific complaint by a construction worker. In each case the grantee is responsible for investigating and documenting the alleged violation.

If a violation is evident, the grantee may work with the contractor on an informal basis to resolve the finding. Where the contractor refuses to address the violation or continues to violate the labor standards provision, the grantee must report the violation to the Project Monitor. The contractor should be informed that an unresolved finding could result in disbarment and make the contractor ineligible for further Federally assisted construction projects. In either event, the grantee should cease payments to a contractor until the contractor has corrected the violation.

(Similarly, if the grantee is found to have willfully ignored labor standards provisions, it may be disbarred or have other sanctions applied against it.) The State will work with appropriate agencies to determine what actions are required.

7. Maintain Labor Standards File

The Labor Standards File should contain at a minimum the following:

- A. evidence that the contract documents contained actual wage rates used and which were included in the solicitation and award documents;
- B. evidence that the contracts contained the proper and applicable Labor Standards Provisions (file may also include certification from the contractor);
- C. evidence that the grantee inquired and was informed that the successful bidder and all subcontractors were not on the debarred list;
- D. evidence that actual payrolls were submitted and were reviewed in a timely manner;
- E. evidence that worker interviews were conducted;
- F. evidence that an enforcement report was submitted to the State and HUD where restitution of \$1,000 or more was required; and
- G. evidence that a preconstruction conference was held.

In addition to the information listed above, the grantee should maintain a file for each prime contractor, with the following documentation:

- Design and Cost Estimates
- Bid Documents
- Evidence of Bid Advertising
- Minutes of Bid Opening Including Tabulation of Bids
- Evidence of Low Bid Review
- Notice of Bid Opening, Contract Award and Pre-Construction Conference
- Executed Contract Documents with Attachments
- Minutes of Pre-Construction Conference
- Copy of Notice to Proceed
- Monitoring and Inspection Reports
- Evidence of the Final Inspection
- Notice of Acceptance of Work
- Lien Waiver Certificate
- Evidence of Disposition of Outstanding Claims
- Evidence of Section 3 Compliance (Monitored in Chapter V)

FINAL INSPECTION & CLOSEOUT

1. Final Inspection

Upon completion of the construction activities, the architect/engineer must provide the grantee with a set of as-built plans with a request for final payment.

Before making the final payment less five percent for retainage, the grantee must conduct a final inspection of the construction work. (In water and sewer projects, the grantee should also notify the State Health Department of the project's completion so that it can be inspected.)

Additionally, the grantee should determine whether all federal and state requirements (e.g. labor standards, **EXHIBIT VIII-X, Final Statement of Wage Compliance**) have been satisfied, and that all contract files are complete.

The grantee can then issue an Acceptance of Work and make final payment less the five percent retainage. After 45 days and upon submission of a **Clean Lien Certificate** (lien release), see **EXHIBIT VIII-Y**, by the contractor, the grantee may release the retainage after having successfully met the requirements as stated in the "**Notice of Final Payment**", **EXHIBIT VIII-Z**.

If after 45 days, there remain claims or liens against the contract, the grantee must take appropriate action including making payments from the retainage and/or the performance and payment bonds as prescribed by state law.

NOTE: Records must be maintained for three years after close-out of contract.

2. State Monitoring

Labor Standards Monitoring, can be found in Section X - State CDBG Monitoring. This section specifically details the items to be addressed when the state field representative monitors your CDBG project.