



ARRA-WAP Record of Preconstruction Conference

Subrecipient: _____ ARRA-WEA Contract No.: _____
Date: _____ Time: _____
Location (address, city): _____ County: _____
Telephone: _____ Conference Call: _____

A preconstruction conference was held at the above date, time and place; a copy of the sign-in sheet for attendees is attached.

Attendees discussed the following federal labor laws, which this project must follow:

Davis-Bacon Act (DBA) - DBA specifies the minimum prevailing hourly wages and applicable fringe benefits to be paid to the various classes of *laborers* and *mechanics* employed on the project. Applicable wage decision includes payment of fringe benefits for specific trades. Fringe hourly payment must be paid in addition to required hourly wage. DBA **requires** weekly payments to workers.

Copeland Act (Anti-Kickback) – Important effects:

- **Prohibits** kickbacks being paid by the employee to the employee.
- **Enforces** the DBA requirement for weekly payment of wages and submission of payrolls.
- Sets rules for deductions allowed or not allowed from a worker's payroll.
- Establishes the basis for contract termination and criminal prosecution under 18 U.S.C 874.

Contract Work Hours Safety Standards Act (CWHSSA) standardizes 40-hour work week, with time and a half the basic rate of pay for all work in excess of 40 hours. CWHSSA imposes penalties and fees for failure to pay workers required over-time pay.

Fair Labor Standards Act (FLSA) - FLSA sets out the requirement for payment of minimum wages, maximum hours, overtime pay, child labor standards and prohibits wage discrimination on the basis of gender. FLSA establishes the rules independent contractor and is under the jurisdiction of the Department of Labor.

Compliance requirements include:

Payroll form: Contractor uses U.S. Department of Labor (DOL) WH -347 Payroll (REV Dec 2008) form to document and report hours an employee works during work week. Electronic versions of the WH 347 may be used, if the format and content match the WH 347. **TDHCA Davis-Bacon Staff will confirm acceptability of proposed versions.**

Statement of Compliance (located at the back of the Payroll Form WH-347) must contain an original signature by the owner or partner, in blue ink.

Certify hourly pay rates: The contractor must certify that all laborers and mechanics employed on the project have been paid hourly rates, as prescribed by applicable laws.

Work week: Contractors must establish their 7-day work week for the duration of the ARRA contract.

Pay period involves **seven consecutive** days. Employer may choose but must follow for entire project.

Weekly pay for Employees.

Overtime: Must pay 1.5 times regular rate for work beyond 40 hours in work week. Two calculation methods allowed for employees with multiple pay rates (by trade and by county):

Actual classification rate X 1.5.

Weighted average: Sum of hourly pay at each base rate involved, divided by total hours worked in that week, divide result by 2, multiply that result by number of overtime hours to determine premium added to sum of pay for hours worked at base rates.

Worker acknowledgement: In either case, prior to payment of wages, the owner must submit to the LSO a certification, signed by employee, agreeing to the method for overtime pay calculation.

Original Payrolls must be submitted weekly, within 7 days following the end of the work week, to the Labor Standards Officer. The Agency will retain the original payrolls.

Timeliness: LSO must **date stamp** the payroll upon receipt.

Consecutively numbered Payrolls begin with the first one marked "initial" and the last marked "final".

Payroll identifies all persons working on the job site. The WH -347 **Payroll** form only requires that the last 4-digits of the social security number identify the employee.

Worker Information Sheet must be attached to the first certified payroll and submitted to the LSO anytime a new worker appears on the certified payroll. This sheet must contain the employee's full name, address, full Social Security number, and cellular telephone number, if available. Do **NOT** list the employee's full Social Security number on the certified payroll.

Confidential employee file: Employer must document full social security number and employee address in employee file. Employer must make this information available to authorized labor standards compliance monitors. Record retention and destruction rules apply.

Pay rate must, at a minimum, equal the hourly wage (including applicable fringe benefits) for the classification listed on the general wage decision included in the contract documents. The general wage decision **S2009-TX-001** applies to this contract as of effective date: **12-11-09**.

The **owner** of a company who performs trade work on the project must list him/herself on the payroll and must show the hours worked each day and total hours for the week. Evidence of ownership or ownership interest in company must be attached to certified payroll. **If ownership evidence unavailable**, owner's hourly wage must be included on the payroll.

Foreman or Supervisor who performs trade work on-site in excess of 20% of his total time, must document hours worked and hourly wages.

Piece-work basis: Any person employed on a **piece-work** basis must appear on the payroll. The hours worked each day and total hours for the week must appear. The effective hourly rate of the piece worker must equal or exceed the prescribed hourly rate for the particular work classification.

Deductions: Only those required by law, or voluntarily authorized by workers in accordance with Federal regulations, may draw from workers' paychecks. The employee must authorize all deductions not required by law and employer must submit these to the LSO.

LSO Review: After the Labor Standards Officer completes their review (7 day period) of the certified payroll, LSO submits the certified payroll, including support documents, to the Department.

Record Retention: Agency, Contractors, and subcontractors must retain **Davis-Bacon records** for three (3) years after the completion of the ARRA contract. The Agency bears responsibility to ensure that **original** payroll records remain available for review during Audits by authorized individuals.

Apprentices employed on the project must hold certification by the U.S. Department of Labor Employment & Training Administration (ETA) Office of Apprenticeship.

Ratio of apprentices to journeymen must not exceed 1-to-1. Each apprentice must produce a bona fide ETA certificate and attach it to the initial WH -347 Payroll form.

Employee classification must agree with the applicable wage decision. Do not classify any project worker as "helper" unless the wage decision lists a "helper" classification. Employee classification and pay must reflect the work they perform. For example: only journeymen may use the tools of a trade.

Additional Classification: Any classification not listed on the wage decision requires the employer to request that the TDHCA Labor Standards Specialist obtain approval by the U.S. Department of Labor prior to the use of that classification on the project. The LSO must complete and submit a Request for Additional Classification and Rate form (TDHCA WEA 6.09) to TDHCA Labor Standards Specialist.

Post applicable **General Wage Decision** and **Employee Rights Under The Davis-Bacon Act** posters, and any approved additional classifications by DOL, in a prominent place, accessible to all workers for the duration of the construction project.

Liquidated Damages may be assessed for failure to pay the proper overtime rate. Liability equals \$10 per day per worker per violation. Additionally, employers bear liability to any underpaid worker for wage restitution (difference between amount paid and legal amount due).

Withheld funds: When an employer fails to comply with Federal labor standards the Department can withhold payments sufficient to properly pay all workers plus any liquidated damages.

Contractors must confirm subcontractors' eligibility to receive federal funds by clearing in the HUD SAMS system prior to sub-contract execution, and all sub-contracts must include the DOE Davis-Bacon Clauses, provisions, and applicable DOL general decision wage rate.

<https://www.sam.gov/portal/public/SAM/>

Prime Contractors should incorporate the form **SF1413** and related Davis-Bacon requirements into their agreements with lower-tier subcontractors. The contract should also include the clauses listed on Part II of the form. [Statement and Acknowledgment of Labor Clauses Included in Contracts, GSA Form: SF1413 \(find in Forms Library, http://www.gsa.gov\)](http://www.gsa.gov)

Labor Standards Officer (LSO responsibilities include):

Subrecipient (project owner, contract administrator) designates Labor Standards Officer (LSO).

Primary responsibility of LSO involves:

- Administration and enforcement of labor standards compliance.
- Obtains complete **WH -347 Payroll** forms from all contractors, collected and reviewed weekly
- Follows up with contractor(s) when underpayment restitution and/or liquidated damages are required. Date Stamp payroll upon receipt.
- Conducts **employee interviews** with a broad sampling of workers on a regular basis, compares wages against applicable wage decision, documents findings on the *Record of Employee Interview* (form WEA 6.11), and retains copies in the Labor Standards file.
- **Compares** the WH-347 Payroll wage calculations with the employee interview data.
- Addresses all violations of labor standards and corrects them promptly.
- Produces labor records for review by TDHCA staff and authorized individuals.
- Upon completion of construction, submits to TDHCA Labor Standards Specialist the Final Wage Compliance Report (form WEA 6.01).

Person who will monitor this project for compliance with Federal Labor requirements:

Name of designated LSO: _____

Start of Construction:

The Agency determines when weatherization work can begin using ARRA funds. Completion of a Preconstruction Conference and the submission of the Start of Construction form to TDHCA allows Construction to begin.

Construction must begin within 10 days of the issuance of the Start of Construction form. If contractors do not begin construction within the 10-day window, they must obtain an updated form.

If the Agency renews a contract, they must submit a new form.

Additional items addressed at the conference included:

I hereby certify that each of the foregoing topics was discussed in the Pre-Construction Conference. I understand that nothing presented in this document or discussed in the Pre-Construction Conference represents a modification to any existing contract or agreement or to any state, federal, or local requirement.

Subrecipient Signature:

Labor Standards Officer Signature:

Contractor Signature:

Subcontractor Signature:

TDHCA Labor Standards Specialist:

Phone:

Email:

Other Participant (s):

Other Participant:
