

**MISSISSIPPI STATE PORT AUTHORITY
AT GULFPORT**

**Port of Gulfport Restoration Project
Labor Standards**

Policy & Procedures Manual

Updated: November 30, 2017

INTRODUCTION

The Mississippi State Port Authority at Gulfport (MSPA) received federal aid through a U.S. Housing and Urban Development (HUD) Community Development Block Grant to restore the Port of Gulfport. As a grant subrecipient of these federal funds from HUD, MSPA must ensure compliance with the Federal Labor Standards Provisions and ensure that all laborers and mechanics employed by the contractors and subcontractors in the performance of construction work for the Port of Gulfport Restoration Project (PGRP) financed in whole or in part with federal funds shall be paid wages at rates no less than those prevailing wage rate.

It is the responsibility of MSPA to enforce the Federal Labor Standards Provisions for all federally funded projects where the federal labor standards are applicable, which includes the following:

- **The Davis-Bacon Act** (40 USC §§ 3141 - 3144, 3146 - 3148 and 29 CFR Parts 1, 3, 5, 6 and 7)
- **The Copeland Anti-Kickback Act** (40 USC § 3145 and 18 USC § 874; and 29 CFR Part 3)
- **The Contract Work Hours and Safety Standards Act** (40 USC §§ 3701 - 3708 and 29 CFR Part 5)
- **The Fair Labor Standards Act** (29 USC § 201, *et seq.* and 29 CFR Chapter V)
- **Section 3 of the Housing and Urban Development Act of 1968** (24 CFR Part 135)

To ensure compliance with the Federal Labor Standards Provisions, MSPA has developed this Labor Standards Policy and Procedures Manual to provide the necessary guidance to the contractors to effectively implement and ensure Federal Labor Standards Compliance.

In accepting federal funds through the Mississippi Development Authority (MDA), MSPA and its contractors agree to abide by and ensure compliance with the Federal Labor Standards laws, regulatory requirements, and the requirements contained in this Policy and Procedure manual. This Policy and Procedure manual may impose additional requirements over and above Federal Labor Standards laws and regulatory requirements.

The purpose of this manual is to assist contractors in understanding their Federal Labor Standards obligations and to ensure that the requirements of the laws are met in the most efficient and accurate manner as possible. The contractor should reference the **Federal Labor Standards Requirements in Housing and Urban Development Programs (1344.1)** found at www.hud.gov.

All forms referenced in this manual are included and can be accessed and downloaded from www.portofthefuture.com

LABOR LAWS AND REQUIREMENTS

Briefly described, the laws which apply are:

- **Davis-Bacon Act (DBA)**: The Davis-Bacon Act requires the payment of prevailing wage rates, which are determined by the US Department of Labor (DOL) to all laborers and mechanics. The law applies to construction, alterations or repair contracts in excess of \$2,000. Construction includes alterations and/or repair, including painting and decorating, of public buildings or public works.
- **Copeland Act (Anti-Kickback Act)**: The Copeland Act requires employers to pay employees at least once a week, without any deductions or rebates except permissible deductions. This 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 also requires every employer (contractor and subcontractor) maintain payroll records and to submit weekly certified payroll reports. The Act applies to all contracts covered by Davis-Bacon. **Violation of this Act is a Federal criminal offense.**
- **Contract Work Hours and Safety Standards Act (CWHSSA)**: This Act applies to contracts over \$100,000. Contract Work Hours and Safety Standards Act requires workers to receive overtime (O/T) (over 40 hours in a workweek) compensation at time and one-half pay for overtime hours (over 40 hours in any workweek) plus full fringe worked on the covered project [(1 and ½ x base pay) + fringe = O/T compensation). Contract Work Hours and Safety Standards Act violations render the contractor liable to the underpaid worker for wage restitution or liquidated damages penalty (\$10/calendar day per violation). The CWHSSA applies to both direct Federal contract and to indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. **Intentional violations of this standards act are considered a Federal criminal misdemeanor.**
- **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.
- **Section 3 of the Housing and Urban Development Act of 1968**: Section 3, as amended requires the provision of opportunities for training and employment that arise through some HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. *Please refer to the MSPA PGRP Section 3 Plan and all Policies and Procedures for additional guidance regarding the PGRP Section 3 Program. This manual does not include the PGRP Section 3 Plan, Policies & Procedures.*

MSPA RESPONSIBILITIES

Once it is determined that a construction project is subject to the Federal Labor Standards requirements, certain steps must be taken to ensure compliance prior to the bidding for construction. MSPA shall ensure compliance with Federal Labor Standards Provisions during the course of the project and will require the contractor to identify the appropriate personnel or Labor Compliance Officer, who will be responsible for labor compliance during its work on the PGRP. MSPA shall be responsible for:

- Proper application of Davis-Bacon requirements.
- Support contractor compliance
- Discuss compliance with Federal Labor Standards Provisions during the pre-bid conference and other initial meetings.
- Monitor contractor performance.
- Investigate probable violations, complaints of underpayment and other areas of non-compliance.
- Pursue debarment and other available sanctions against repeat labor standards violators.
- Ensure current wage decision and labor standards provisions are contained in the bid documents.
- Conduct 10 day wage check.
- Verify eligibility of contractor.
- Conduct Pre-Construction Conference and discuss compliance with federal labor standards with contractor.
- Maintain Contractor Award Notification and provide to MDA upon request.
- Ensure wage decisions and DOL posters are posted on site.
- Conduct regular on-site interviews with laborers and mechanics.
- Ensure certified payrolls and statements of compliance are received by the PGRP Construction Manager within seven (7) business days of the payroll ending date. For purposes of this requirement, business days are weekdays (Monday – Friday) except for holidays on which MSPA’s business offices are closed. A list of such holidays shall be posted at www.portofthefuture.com. For purposes of calculating the 7

business day time period, the payroll end date shall be excluded, and the first day counted shall be the first business day after the payroll end date.

- Review certified payrolls and compare to the employee interviews and wage decisions.
- Maintain a current list of all contractors and subcontractors approved for site access for each active construction project (the “Approved Access List”) to ensure receipt of certified payrolls and to ensure that site access is limited to approved contractors and subcontractors only.
- Notify the PGRP Construction Manager of payroll discrepancies.
- Ensure that MSPA PGRP Project Sign is posted at the entrance of the PGRP construction site until project close out.

GENERAL CONTRACTOR RESPONSIBILITIES

The 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. Contractor responsibilities include but are not limited to:

- Attend Pre-Construction Conference.

Review and identify any additional classifications needed by all contractors and subcontractors for the project. If additional classifications are needed for the project, contractor should notify MSPA and the PGRP Construction Manager immediately.
- Read, understand, and sign all appropriate forms, including but not limited to the Contractor Certification and Certificate of Substantial Completion.
- Comply in a timely manner with requests from PGRP Construction Manager. Including documentation of fringe benefits, corrected Certified Payrolls, wage restitution or other documentation needed.
- Include all appropriate wage decisions and labor standards clauses in contracts with subcontractors.
- Ensure Federal Labor Standards compliance from subcontractors.
- Post wage decision, including additional wage classifications, at work site.
- Ensure that certified payrolls from all subcontractors are submitted to the Construction Manager within time limitations. General contractors and subcontractors must submit certified payrolls to the Construction Manager within seven (7) business days of the payroll ending date. For purposes of this requirement, business days are weekdays (Monday – Friday) except for holidays on which MSPA’s business offices are closed. A list of such holidays shall be posted at www.portofthefuture.com. For purposes of calculating the 7 business day time period, the payroll end date shall be excluded, and the first day counted shall be the first business day after the payroll end date.
- Ensure compliance with the Port of Gulfport Construction Site Access Policy & Procedures (the “Site Access Policy”) by all subcontractors scheduled to perform work on-site.
- Ensure availability of the general contractor's and subcontractor's employees for

interview at the job site with the PGRP Construction Manager or MSPA representative.

BIDDING AND CONTRACTING REQUIREMENTS

MSPA shall ensure that all applicable Federal Labor Standards language, Section 3 language, and the appropriate prevailing wage decisions are included in the construction bid specifications and contract documents for construction work and maintenance work subject to Davis Bacon rates. Securing current prevailing wage rates for bidding and contract award documents is one of the most critical duties of the bidding and contracting requirements. Prior to bid opening, bidding contractors must continually verify with MSPA that the wage decision used in the bid documents is still applicable and enforce the decision in place at bid opening. This is provided the contract is awarded within 90 days.

Failure to enforce the correct decision will leave the general contractor, and/or subcontractor liable for any difference between wage rates used in bid documents and the correct wage rates. The correct wage decision must be included in bid specifications, bid documents, contracts, and subcontracts. Failure to include a wage decision or the use of a wrong decision will not relieve the contractor from potential enforcement action, and making wage restitutions if underpayments occurred. In addition, contractors may also be exposed to liability. **The correct wage decision issued for each project must be included in all bid documents and contracts.**

WAGE DETERMINATIONS AND WAGE RATE DECISIONS

The Davis-Bacon wage decision that applies to a project contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work. Federal wage determinations are generally issued for four (4) categories:

- Building
- Residential
- Heavy
- Highway

It is important to understand the differences when determining which rate category to request to avoid paying wages from an inappropriate determination.

- **Building** construction generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
- **Residential** projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four (4) stories tall.
- **Heavy** construction is generally considered for all construction not properly classified as highway, residential or building. Water and sewer line construction will typically be categorized as heavy construction.

Highway projects include construction, alteration or repair of roads.

The wage determination for each project will be included in the contractor's contract with MSPA. In the event a contractor should need to request a wage determination from the MSPA Compliance Office, they should use the *Request for Wage Determination and Response to Request Form (see Appendix)*. The form should be completed and forwarded to MSPA Compliance Office. MSPA shall in turn submit the request to MDA for further processing. All wage decisions should be reviewed to ensure all job classification are covered by the wage decision for the proposed project.

After contract award, if the wage decision for the project does not include a specific classification of a worker that will be working on the project, then the contractor must request an additional classification from MSPA using the *Request for Authorization of Additional Classification and Rate (see Appendix: Form SF14441)*. Once received, MSPA will complete the *Report of Additional Classification and Rate (see Appendix: Form 4230A)* to be submitted to MDA and then ultimately, HUD. Contractors should plan to allow up to 45 days for an additional classification response, only those classifications which are contained in the wage decision may be used on this project. A violation is considered to exist when a payroll lists a classification not included in the wage decision.

LABOR CLAUSES AND WAGE DECISIONS IN BID AND CONTRACT DOCUMENTS

The Labor Standards Clauses describe the responsibilities of the general contractor and/or subcontractor concerning Davis-Bacon wages and obligate the general contractor and/or subcontractor to comply with the labor requirements. The Labor Standards Clauses also provide for remedies and sanctions 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. The Labor Standards Clauses are contained in the Federal Labor Provision (HUD-4010).

The applicable wage rate decision rendered by MSPA and any additional classifications must be a physical part of the bid package. The failure to include the required wage decision and appropriate Labor Standards provisions does not relieve the general contractor from potential liabilities for compliance and enforcement actions related to meeting the obligations of the proper wage decision and Labor Standards.

Wage Determinations are modified by the U.S. Department of Labor as necessary to reflect changes in the construction industry. It is very important to be sure the most recent Wage Determination is being used and that all modifications to that decision are included in the bid documents. The wage rates in effect 10 calendar days before bid opening are "locked in." 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. The Wage Determination will apply to all work covered by the construction contract to be awarded under that bid advertisement. Ten (10) days prior to bid opening, the contractor must verify with MSPA if the wage decision has been modified.

An exception to the "lock-in" date applies when the construction contract award is delayed 90 days or more after the bid opening. In these cases, changes in the Wage Determination published between the bid opening and construction contract award date must be included in the construction contract. If a contract has been awarded but construction has not yet begun within 90 days of the award, the contractor must also determine if any modifications have been issued to the wage decision. If so, the contractor must adhere to the modified wage decision.

LEGAL COUNSEL/ATTORNEY REVIEW

Finally, the bid package should be reviewed in its entirety by the contractor's legal counsel/attorney to ensure its compliance with applicable Federal, State and City/County laws.

CONTRACTOR ELIGIBILITY

Before issuing a contract to the selected contractor(s), the contractor must verify that the general contractor and all subcontractors are not debarred or excluded from working on federally assisted projects. Before the contract is awarded, the contractor must request this verification from the MSPA Compliance Office. A copy of the verifications must be a part of their contract that is sent to MDA for review and approval.

PRE-CONSTRUCTION CONFERENCE

MSPA shall hold a pre-construction conference with the general contractor and subcontractors prior to the start of work to review contractual requirements (including labor, and performance schedules) and reporting procedures. MSPA will use this opportunity to clearly present the Federal statutory compliance requirements as well as performance expectations. The pre-construction conference must include a sign-in sheet and record of the minutes during the pre-construction conference which must be kept in the project file. Items that should be covered at the pre-construction conference include, but are not limited to:

- Provide and review with the contractor a copy of the "*Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*" This guide can be downloaded from www.portofthefuture.com
- Explain that all contractors must submit weekly Certified Payrolls and Statements of Compliance signed by a representative of the company to PGRP Construction Manager, and that the general contractor is responsible for ensuring compliance with this requirement by all of its subcontractors. Contractors should be made aware that the Certified Payrolls and Statements of Compliance are due to the PGRP Construction Manager within 7 business days of the payroll ending date. Certified Payrolls and Statements of Compliance must be timely submitted even during periods when the contractor is not working. The obligation to submit Certified Payrolls and Statements of Compliance shall not end until a "Final" payroll is submitted. The payroll form can be downloaded from www.portofthefuture.com and is also located in the Appendix.
- Explain that failure to submit weekly Certified Payrolls and Statements of Compliance to the Construction Manager may result in: (1) withholding of payment; (2) being barred from the work site; and (3) debarment. Other measures outlined in this manual may also be imposed for failure to comply with this requirement.
- Explain that only approved subcontractors are allowed on the work site;
- Explain the requirements of the Site Access Policy.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract.
- Discuss the classifications to be used. If additional classifications are needed, request the additional classification in writing and forward to the MSPA Compliance Office immediately for processing.
- Explain that a *helper* classification cannot be used unless it appears on the applicable wage decision.

- Explain that Exempt Classifications, which need not appear on payrolls, are as follows: Project engineer, superintendent, supervising foreman (not a working foreman), waterboy, messenger, and clerical help.
- Explain that Laborers are defined as unskilled workers. A laborer performing the work of a trade must be paid no less than the prevailing wage for that trade.
- Payment requirements to mechanics and laborers: All mechanics and laborers employed at the site must be paid weekly (without exception), the full amount of wages and fringe benefits required in the wage decision regardless of any contractual relationship alleged to exist.
- Explain that employee interviews will be conducted periodically during the project.
- Emphasize that a copy of the wage rate decision must be posted at the job site. The wage decision must be protected from inclement weather during construction.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State or U.S. Department of Labor. If apprentices or trainees are to be used, the contractor must provide the PGRP Construction Manager and MSPA with a copy of the State certification of his/her program.
- If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half whenever working overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
- Provide contractor with posters for the job site, such as the "Notice to All Employees Working on Federal or Federally Financed Construction Projects." The posters can be downloaded from www.portofthefuture.com as well as www.dol.gov in Spanish and in English.
- The contractor should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring **must be resolved prior to making further payment to the contractor**. Remind the contractor that Labor Standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such

discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

NOTICE TO PROCEED

Following execution of the contract documents and completion of the Pre-Construction Conference, it is typical practice to issue a Notice to Proceed to the general contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date, and provides the basis to assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents. Once the contract is executed, MSPA will submit two (2) copies to the general contractor for signature within seven (7) business days (excluding holidays).

ENFORCEMENT OF REQUIREMENTS DURING CONSTRUCTION

During construction, the general contractor is responsible for enforcing the Labor Standards requirements. This includes good construction management techniques (e.g., Pre-Construction Conferences, issuance of Notices to Proceed, and payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews. The applicable wage decision and all required DOL Posters should be posted at the construction site. This information should be protected from inclement weather until construction is completed.

PAYROLL REVIEW

Once construction is underway, each contractor should complete a weekly Certified Payroll report for its employees on the covered job and sign the Statement of Compliance. The general contractor must ensure that weekly payrolls (including signed Statements of Compliance) are timely submitted by all subcontractors working on the project. Certified Payroll reports must be submitted by all contractors to the Construction Manager within 7 business days of the payroll ending date for the reporting period. All contractors are responsible for monitoring compliance with labor standards requirements. The weekly Certified Payrolls are to be reviewed as they are submitted. Wage rates reported on the Certified Payroll are to be compared to the rates in the applicable wage decisions. All payrolls received by the Construction Manager will be stamped when received by the PGRP Construction Manager and inspected for compliance. Contractors may email copies of Certified Payrolls and Statements of Compliance to the Construction Manager as long as the originals are subsequently physically delivered to the Construction Manager in a timely manner. The Certified Payroll and Statement of Compliance shall be deemed to be received on the date of the email.

Certified Payrolls and Statements of Compliance must be timely submitted even during periods when the contractor is not working. The obligation to submit Certified Payrolls and Statements of Compliance shall not end until a “Final” payroll is submitted. The only exception to this requirement is if the contractor notifies the Construction Manager and MSPA in writing that it will not be working on the project for an extended period of time, then the contractor may submit a single “no work” payroll for the entire period of absence after it returns to work on the project.

MSPA may be designated as the agent of the Construction Manager (for purposes of payroll review only) on a project-by-project basis as needed for the efficient monitoring of contractor compliance.

The DOL Payroll Form - WH 347 (*see Appendix*) should be used to ensure compliance with applicable regulations. The Statement of Compliance Form WH 348 (*back of WH 347*) (*see Appendix*) must be completed and signed by an authorized representative of the company and submitted to the PGRP Construction Manager in conjunction with the payroll form.

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

Contractors should review every payroll to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no other falsifications. In addition to the falsification indicators described in the DOL guidance, items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance has been signed by a representative of the firm.

Any discrepancies and/or falsification indicators must be reported to MSPA Compliance Office, along with the steps being taken by the contractor to resolve the discrepancies. Where underpayments of wages have occurred, the contractor is responsible to make sure the correct wages are paid and that 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. Contractors should contact the MSPA Compliance Office for assistance if a violation occurs.

PROCEDURE IN THE EVENT OF NONCOMPLIANCE WITH 7 DAY RULE FOR PAYROLLS

In the event, MSPA or the Construction Manager identifies an instance where payrolls are submitted more than 7 businesses days from the end of the pay period, the following procedure will be followed:

1. After each instance of noncompliance, a formal letter return receipt requested shall be sent to both the subcontractor and the general contractor advising of the noncompliance. The first letter shall constitute a warning. This shall constitute the only warning that the general contractor shall receive for the duration of the project. Any future submission of late payrolls by the general contractor or any subcontractor on the project shall result in the imposition of the remedial action outlined below.
2. Any subsequent payrolls submitted more than 7 businesses days from the end of the pay period will result in the violating contractor being barred from the job site until the issue is resolved.
3. Additional violations of the 7 day rule may result in payment being withheld, as well as the general contractor or subcontractor being barred from the job site until the issue is resolved.
4. Repeated violations of the 7 day rule may result in the general contractor or subcontractor being permanently barred from the job site for the duration of the

PGRP.

MSPA should provide the MDA-DRD with copies of the formal letters and acknowledgements of receipt of the same from the general contractor and subcontractors within 30 days of MSPA's receipt of the acknowledgements. MSPA shall document in its payroll records all instances in which a payroll is submitted after 7 business days, as well as its response thereto, including all letters, acknowledgements of receipt and other communications. After the issue has been resolved, the matter should be identified in the payroll records as closed.

MONITORING SITE ACCESS FOR CONTRACTORS AND SUBCONTRACTORS

In order to verify that all contractors and subcontractors submit certified payrolls and that only approved subcontractors receive site access, MSPA and the Construction Manager shall:

1. Maintain the Approved Access List;
2. Upon MSPA's approval of a new subcontractor, update the Approved Access List and send a copy to the Construction Manager, Payroll Clerk, and general contractor;
3. MSPA and the Construction Manager shall ensure that each subcontractor on the Approved Access List submits timely certified payrolls for each week on-site. Likewise, MSPA and the Construction Manager shall also ensure that each subcontractor currently submitting payrolls is included on the Approved Access List;
4. If MSPA or the Construction Manager discovers that a subcontractor currently performing work on-site has failed to submit timely certified payrolls, it shall immediately notify the subcontractor and general contractor in writing of the deficiency and request submission of all outstanding certified payrolls. The subcontractor shall be barred from the job site until all outstanding certified payrolls are received by the Construction Manager.
5. In the event that MSPA discovers an unapproved subcontractor working on-site, MSPA shall immediately remove the subcontractor from the work site until the subcontractor has received MSPA approval and submitted any outstanding certified payrolls.

ON-SITE INTERVIEWS

The Labor Standards requirements include periodic job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive. The interviews also used to verify that classifications and wage rates are accurately reported on the Certified Payrolls.

Interviews should occur throughout the course of construction and include a sufficient sample of job classifications represented on the job, as well as, workers from various companies to allow for a reasonable judgment as to compliance.

Information gathered during an interview is recorded on the Record of Employee Interview Form HUD-11 (*see Appendix*). The interview should take place on the job site and conducted privately (this is a one-on-one process). The interviewer should observe the duties of workers before initiating interviews. Employees of both the general contractor and subcontractors should be interviewed.

The HUD-11 Forms should be compared by MSPA to the corresponding contractor and subcontractor payroll information within two weeks of MSPA's receipt of the payroll for the pay period during which the interview was conducted. If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview Form and it should be signed by the appropriate person. If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the Interview Form.

Each employee interviewed shall be informed that the information given during the interview is confidential, and that his/her identity will only be disclosed with the prior written consent of the employee.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form - HUD Form 4731 (*see Appendix*) and forward to MSPA. The complaint must be investigated and resolved.

PROGRESS PAYMENTS

Upon receipt of requests for payment during construction, the contractor should check that Labor Standards compliance is being met:

- All weekly Certified Payrolls and Statements of Compliance have been received and reviewed and any discrepancies resolved; and
- Employee interviews have been conducted as necessary, checked against Certified Payrolls and the wage rate decisions, and all discrepancies corrected.

Although retainage is not a requirement, many contractors have found it helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems.

FINAL PAYMENT

When construction work has been completed, the contractor must ensure that:

- All weekly Certified Payrolls and Statements of Compliance have been received and any discrepancies have been resolved.
- All discrepancies identified through job site interviews have been resolved; and
- All files are complete.

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. 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 an 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.

Contractors must notify the general contractor, in writing, of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The general contractor is allowed thirty (30) days to correct the underpayments. The employer is required to report the restitution paid on a correction Certified Payroll. The correction Certified Payroll will reflect the period of time for which restitution is due (*e.g., payrolls #1 through #6; or a beginning date and ending date*). The correction Certified Payroll must list:

- Each employee to whom restitution is due and their work classification;
- The total number of work hours;
- 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 to be paid.

To acknowledge that restitution of underpayment has been resolved, the Affidavit of Wage Restitution must be completed and signed by each employee who has received restitution payment along with the corrected Certified Payroll as evidence of their receipt of the payments. The contractor should review the correction Certified Payroll to ensure that full restitution was paid. The general contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction Certified Payroll within thirty (30) days. The contractor must submit to the MSPA copies of all checks and paperwork showing restitution has been made.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project, the general contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The contractor should continue to attempt to locate the unfound workers for three (3) years after the completion of the project. After three (3) years, any amount remaining in the account for unfound workers should be forwarded to MSPA.

DOCUMENTATION AND REPORTING REQUIREMENTS

- Contractors must maintain documentation to demonstrate compliance with the Labor Standards requirements including, but not limited to:
- Bid and contract documents with the Labor Standards Clause, Section 3 and Wage Decision;
- Certified Payroll Forms from the contractor and subcontractors, including signed and dated Statements of Compliance;
- Documentation of on-site job interviews and review of the corresponding Certified Payroll to detect any discrepancies; and
- Documentation of investigations and resolutions to issues that may have arisen (*e.g., payments to workers for underpayments of wages or overtime*).
- Authorization forms for all “other” deductions showing amounts, type of deduction and the employee’s signature. This documentation must be sent to the MSPA.

The Labor Standards Compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected are not unduly exposed to financial or personal risk.

The Labor Standards Compliance documents must be preserved and retained for a period of five (5) years following the completion of work. Keep sensitive materials confidential at all times (*in a locked file cabinet, not left in areas accessible to the public*):

- Do not include Social Security Numbers on documents and records unless it is absolutely necessary;
- Do not disclose the identity of any information unless it is necessary and only if authorized by the informant; and
- Dispose of documents and records containing sensitive information responsibly.

SANCTIONS

There is a range of sanctions that may be imposed for alleged, suspected or known labor standards violations of the Davis-Bacon Related Acts. Violations (alleged, suspected or known) may result in the following:

Davis-Bacon Related Acts (DBRA):

- Reduction or suspension of contract payments.
- Denial of Federal assistance.
- Department of Labor monitoring of records
- Suspension or debarment from participation in Federal programs.

Contract Work Hours and Safety Standards Act (CWHSSA):

- Liquidated damages accruing at \$10 per day per violation.
- Intentional violations are a Federal misdemeanor, punishable for each and every offense by a fine of not more than \$1,000, or by imprisonment for not more than six (6) months, or both.

Copeland Act:

There are 3 levels of Copeland Act violation.

- **Unauthorized deductions.** (*Unless* associated with Certified Payroll falsification or kickbacks as outlined further below.)
- **Payroll falsification.** Criminal prosecution resulting in: Monetary fines up to \$5,000; and/or Imprisonment for not more than two (2) years_
- **Kick-backs.** Criminal prosecution (*only* where the nature of Federal assistance is more than a loan guarantee or insurance).

NOTE: In every instance where such kick-backs are alleged, suspected or known, the issue **must** be referred to MSPA immediately.

SUSPENSION/ DEBARMENT

MSPA has the sole authority to impose suspension and/or debarment relating to violations of the Davis-Bacon Related Acts Labor Standards provisions on contractors, subcontractors, any firm, corporation, partnership or association in which a contractor or subcontractor has a substantial interest where aggravated or willful violations of Davis-Bacon Labor Standards have been committed.

CRIMINAL PROSECUTION

Any case involving alleged, suspected or known Davis-Bacon violations that may involve criminal prosecution (i.e., falsification of Certified Payrolls or kick-backs) must be adjudicated by DOL.

- **Payroll falsification.** Cases that involve Certified Payroll falsification may have been referred to DOL directly for its investigation at the outset or referred to DOL

in the course of referrals for administrative review/hearings or other sanctions. All referrals suggesting consideration for criminal prosecution must be submitted through MSPA. MSPA will forward such recommendations to HUD Labor Relations or to DOL directly.

- **Kick-backs.** Every instance of alleged, suspected or known kick-backs where the nature of Federal assistance is more than a loan guarantee or insurance **must** be referred to MSPA immediately upon such recognition.

PLEASE NOTE: Violation of the Davis-Bacon Act may result in suspension of the project payment, advance or guarantee. MSPA may recommend that the contractor's legal counsel review all bid packages and construction contracts for compliance with applicable Federal, State, City and County laws. Falsification of Certified Payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

COMPLAINTS

All Labor Standards complaints related to federally funded projects as administered by MSPA must be reported using the Labor Standards Compliant Intake Form 4731. This form must be submitted to MSPA. MSPA will then take the necessary actions to review and seek to resolve the complaint. MSPA encourages all contractors to first seek to resolve labor disputes at the local level and ensure compliance according to the Labor Standards provisions and contractors responsibilities.

All Forms included in the Appendix of this *Labor Standards Policy and Procedures Manual* can be accessed and downloaded from www.portofthefuture.com.