

Fountain Green City

**375 N State St.
Fountain Green, UT 84632**

INVITATION TO BID - COMPETITIVE SEALED PROPOSALS (CSP) FOR A PROCUREMENT OF UPGRADES AND IMPROVEMENTS TO THE FOUNTAIN GREEN CITY PARK.

DOCUMENT SUMMARY:

The City of Fountain Green is seeking Competitive Sealed Proposals (CSP) for a procurement of upgrades and improvements to the Fountain Green City Park. The project is funded through a Community Development Block Grant (CDBG). The City will select one (1) Supplier to provide equipment, materials and labor for the project as outlined in this request.

SCOPE OF WORK:

Fountain Green City is seeking to make upgrades and improvements to the Fountain Green City Park, which is located at 351 W. Center Street, Fountain Green, UT 84632. This project will include: The addition of two (2) Pickleball Courts, one (1) Sand Volleyball Court and one (1) new playground equipment set.

- **Pickleball Courts:**

To be installed under a 10,092 sq. ft. bowery, which will not change in size after the project is completed. Pickleball Courts should include sports flooring, nets and poles.

- **Sand Volleyball Court:**

To be installed in a 30x60 sq. ft. area, which should not change in size after the project is completed. Sand Volleyball Courts should include poles, net, and sand.

- **Playground Equipment:**

To be installed in a 1,000 sq. ft. area. This should include new playground equipment and safety surface material. The new equipment should not change square footage after the project is completed.

Additional items that may be out for bid that are not included in this scope of work are NOT considered part of this CSP, but rather may be noted for information purposes.

Fountain Green City requires suppliers to provide a park system that meets or exceeds all current federal standards and ADA requirements.

The CSP shall include all costs associated with proposed park improvements and upgrades.

QUESTIONS CONCERNING THE CSP SHOULD BE DIRECTED TO:

Fountain Green City
Attn: Mayor Mark Coombs
375 N State St.
Fountain Green, UT 84632
Tel: (435) 445-3453
frontdesk@fountaingreen.org

DESIGN ELEMENT GUIDELINES & PLAY SYSTEM SPECIFICATIONS:

Suppliers should base their playground equipment designs on meeting all accessibility and safety standards as well as the guidelines & specifications listed in this CSP. Quality of equipment components, quality of design, play value, handicapped accessibility, inclusiveness, cost, appropriateness to location and target demographic must be taken into consideration in the design of the play system (Contact the above listed number or address for further demographic information).

The total dollar amount allocated to complete the full project has a target amount of \$250,000. Please provide proposals that fit within this budget amount. Any proposal exceeding \$5,000.00 beyond the budgeted amount will automatically be rejected.

In your proposal provide a list of the designed components being proposed for the park improvements and updates, as well as a time frame for product delivery once notified of award. Please include structure and component model numbers, materials, color choices and recommendations, protective area requirements, target age ranges and developmental levels, target play type or activity, number of children park systems support, estimated lifetime of equipment including manufacturers' warrantee and any other relevant descriptive information.

Play system design shall safely fit in the playground area as described above. Suppliers are encouraged to take accessibility into account in their designs. Suppliers may submit proposals from non-traditional type playground structures, if desired, in whole or as components of any overall park improvements and upgrades.

Required Items:

1. All park system elements must meet and/or exceed all federal guidelines.

2. Park system must include engineered wood fiber fall zone material to required minimum depth over play area with subsurface drainage system (washed sand), drainage fabric and all concrete footings installed per all federal standards.
3. All equipment must be of a commercial grade and quality. Post diameters must be appropriate for public use. Minimum post diameter is required to be followed on all post and platform equipment. No residential grade equipment will be accepted.
4. Play system must include landing pads or wear mats for all equipment as appropriate.

Preferred Play System Qualities:

1. All play system elements must demonstrate the highest level of durability in materials and finishes selected in consideration of child health and safety.
2. "Green" construction practices and materials are highly desired.
3. Structures and elements should be unique to the park so as not to duplicate other equipment in the greater area.
4. Structures should provide a variety of built-in activities.
5. Play systems that are designed to accommodate and encourage "inclusive play" for children of all abilities may receive higher scores than those that do not.
6. Play systems should have elements that are designed to encourage open-ended, imaginative, and social play.

ASSEMBLY/INSTALLATION, INSPECTION AND WARRANTY:

Assembly/Installation: The play system assembly and installation will be provided and managed by the Supplier. The Supplier must provide direct supervision from manufacturer or provide qualified and certified representative familiar with playground installation. All tools and equipment required to install play equipment shall be provided by the Supplier for this project. The Supplier will be given 365 calendar days to complete the proposed work including product manufacture, delivery and installation. Calendar days will begin as outlined in the awarding of the bid/contract. The Supplier will certify installation is in accordance with all manufacturers' requirements including, but not limited to warranty and fall zone requirements.

Inspection: A certified representative of the Supplier is required to conduct a post installation inspection of all park improvements and upgrades upon completion to insure proper installation. If not properly installed, modifications must be submitted in writing to the City and remedied immediately. Co-inspection with the Supplier's representative of assembly and installation work will be conducted by the City following installation. The City will supply the punch list for final completion generated by this co-inspection. The

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1. The first of these is the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference. This is due to the fact that the Government has not been able to secure the necessary funds to carry out its policy of non- interference. This is due to the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference.	2. The second of these is the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference. This is due to the fact that the Government has not been able to secure the necessary funds to carry out its policy of non- interference. This is due to the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference.
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Supplier shall submit to the City the manufacturer's certification of compliance and warrantee following punch list completion.

Warrantee: Upon completion of installation, the Supplier must provide documentation attesting the equipment has been installed meeting all specifications required to be warranted by manufacturer. Additionally, it is the Supplier's responsibility to provide to the City the manufacturer's warrantee of installed equipment.

COMPLIANCE:

All equipment must meet and/or exceed all federal guidelines. Documentation of compliance must be provided to the City with the Supplier's proposal.

All equipment must comply with Americans with Disabilities Act (ADA). The designs submitted by the Supplier must incorporate either a transfer platform or ramp in each design when necessary.

The selected Supplier will be required to comply with the requirements of the CDBG funding source. These requirements will be made part of the installation contract that will be entered into following Supplier selection. The CDBG requirements include compliance with 4010 Federal Labor Standards, the CDBG Supplemental Conditions and Davis-Bacon Building Wage Rates, all of which are attached below for reference as Attachments B.

The Supplier will ensure that hiring is made on the basis of merit and qualifications and that there will be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

The Supplier and any persons doing work on this project will be required to obtain business registration with Fountain Green City.

All laborers and mechanics employed by Supplier in performance of this construction work shall be paid wages at rates as may be required by law.

The Supplier shall utilize the Utah Davis-Bacon Wage Rates for Heavy Construction effective to the most recent date posted prior to bidding.

The Supplier must provide an original Certificate of Product Liability Insurance.

DISCLAIMER:

Fountain Green City shall be exempt from any liability for costs incurred by unsuccessful suppliers in the preparation of a CSP.

PROPOSAL SUBMITTAL DATE & TIME:

All CSP must be submitted to Michelle Walker at Fountain Green City Clerk's Office by 4:00 pm MST on 12/07/2023

The Fountain Green City Clerk's Office is located at 375 N State St. Fountain Green, UT 84632.

All submitted CSP must be addressed as follows:

Proposal for Fountain Green City Park Project

Attn: Fountain Green Mayor Mark Coombs

375 N State St.

Fountain Green, UT 84632.

PROPOSAL FORMAT:

Proposals shall be submitted in the following format:

- Project Name
- Supplier Name
- Statement that CSP meets CDBG Guidelines
- The project's proposed description, photos, plans, etc.
- Designs showing all safety precautions necessary for this park project
- Warrantee and insurance capabilities
- Statement of understanding of Davis-Bacon and non-discrimination requirement
- Project Cost Proposal & Timeline
- Any additional information relating to scoring criteria as listed below
- References

Proposals must include complete drawings for each design, specifications and pictures for each component in designs and colors available. Proposals must include a bid price for each design presented. Bids must list the cost of the equipment, fall zone material, drainage material and labor separately. The City reserves the right to reject any and all proposals with or without cause, and to accept proposals which it considers most favorable. Proposals should include a minimum of two references of installations similar to that proposed for Fountain Green City. References shall include name of project, location, contact information including phone number and general cost of installation.

All delivery, assembly, installation and supervision costs must be included in the proposal. Payment for the project will be sent within sixty (60) days after delivery and assembly/installation and invoicing of the park upgrades and improvements.

All proposal amounts shall be guaranteed for not less than sixty (60) days after the proposal submittal deadline date.

Each proposal must be accompanied by a Certified Check, Cashier's Check, or Bid Bond payable to Fountain Green City in an amount not less than ten percent (10%) of the total bid amount. The successful Supplier shall furnish approved Performance and Payment Bonds, each in the amount of one hundred percent (100%) of the bid amount. Workmen's Compensation, Comprehensive General Liability, and Transportation insurance and insurance certificates shall be provided by the successful Supplier. Successful Suppliers are required to comply with Fountain Green City Business Licensing requirements. Following execution of proposal receipt, proposals will be available to the public upon specific request.

No proposal may be withdrawn within a period of sixty (60) days after the bid opening date.

Prices shall include delivery f.o.b., freight paid by the bidder to the jobsite.

The Supplier must submit two (2) hard copies of the proposal to the address listed above. All Proposals must comply with the specifications and guidelines provided in this document.

This solicitation is being offered in accordance with state statutes governing procurement. Accordingly, Fountain Green City reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate at the sole discretion of Fountain Green City.

CIVIL RIGHTS STATEMENT:

Qualified women, veterans, minority and handicapped individuals are strongly encouraged to submit proposals.

EVALUATION AND SELECTION PROCESS:

Proposals will be evaluated by a selection committee based on the following criteria:

Criteria & Points:

1. CSP Proposed Cost & Timeline (20 Points)
2. CSP addresses design guidelines and specifications (20 Points)
3. CSP Statement to meet CDBG guidelines (20 Points)
4. CSP Safety precautions, warrantee and insurance capabilities (20 Points)
5. Overall Quality of CSP and references (20 Points)

Maximum Points: 100

Following the submission of all CSP submittals, a Selection Meeting, made up of the City Council and the Mayor will be held at 7:00p.m. on 12/07/2023, in the Fountain Green City Town Hall located at 375 N State St. Fountain Green, UT 84632. This meeting will be open to the public. All sealed bids shall be opened by the Mayor or designated representative in the above listed open public meeting, before one or more witnesses, at the time and place indicated in this bid packet. The name of the bidder and the amount of each bid shall be recorded and made available to the public. Bids shall not be accepted after the time for submission of a bid has expired.

The City Council shall award the bid/contract to the lowest qualified bidder or the bidder who best satisfies the objective criteria described in the invitation for bids which may include: Experience, performance ratings, inspection of workmanship, suitability, quality, likely compatibility with existing assets or practices, availability, warrantee, references, licensure, proximity or other criteria reasonably specified in the invitation to bid.

Tied bids may be resolved using any reasonable criteria and at the sole discretion of the City Council.

Please refer to Appendix A for further information on the procurement policy of Fountain Green City.

CREDIT FOR FUNDING OF PROJECT:

Credit for funding is given to the Department of Housing and Urban Development through the Community Development Block Grant (CDBG) funding.



APPENDIX A
OFFICE OF THE
STATE AUDITOR

As of October 2018

Procurement Policy

Purchasing Ordinance #71806 of Fountain Green City prescribing the manner Fountain Green City shall procure goods and services.

General Provisions

1. Purchasing Agent Designated. Fountain Green City Mayor is hereby appointed and designated as the Fountain Green City purchasing agent. The Purchasing Agent may from time to time appoint another person to undertake all or some of the duties of the Purchasing Agent set forth herein or appointed to him.
2. Authority to Enter into and Execute Contracts. All contracts are to be approved by the city council. No department, office, advisory or policy board or other organization of Fountain Green City, nor any officer or employee thereof, shall be empowered to execute any purchase order or contract except as specifically authorized in this resolution or by other applicable law. All contracts in violation of this provision are considered void and may result in the personal obligation and liability of persons at fault for such violations.
3. Conflict of Interests Prohibited. No officer, employee, agent, representative or member of any committee of the city shall have a financial interest in any contract, bid, or proposal; receive any compensation or gift from any bidder or proposer; or have any other conflict of interest (See Utah Code 67-16 and 17-16a).
4. Competitive Procurement. Unless exempted by this policy, all purchases and contracts shall be awarded on a competitive basis, as required by this Resolution and applicable State and Federal law.
5. Participation in State Procurement Unit Agreement and Contracts. Pursuant to Utah Code 63G-6a-2105, Fountain Green City may make purchases from or participate in state public procurement unit agreements and contracts, pursuant to the terms of said agreements and contracts without soliciting additional procurement options.
6. Unethical Purchasing Practices. Failure of any agent, officer or employee to comply with ethical purchasing requirements may result in suspension, termination, being personally liable for the purchase and/or criminal prosecution. All agents, officers and employees engaged in the procurement process for Fountain Green City will maintain high ethical behavior in agreement with Utah Code 67-16, Utah Public Officers' and Employees' Ethics Act and avoid the following practices:
 - a. Dividing a procurement to avoid following policy (see Utah Code 63G-6a-2404.3)
 - b. Kickbacks and Gratuities (see Utah Code 63G-6a-2404, 67-16-5 through 67-16-6)
 - c. Failure to Disclose conflicts (see Utah Code 63G-6a-1205 & 67-16-9)
 - d. Cost-plus-a-percentage-of-cost contracts (see Utah Code 63G-6a-1205)

7. Fountain Green City purchases are not subject to sales tax. For vendors requiring documentation of tax exempt status, a TC-712G Exemption Certificate for Governments and Schools may be obtained from the Mayor at (435)445-3453.
8. When a procurement involves the expenditure of State or Federal funds, Fountain Green City shall comply with the applicable State and Federal laws and regulations.

Authorization Requirements for Purchases

1. Purchases up to \$500.00. All procurements of services and goods in an amount less than \$500.00 may be approved by the Supervisor, provided such procurements have been budgeted for within the department and are in line with the budgeted purposes and responsibilities of said department.
2. Purchases from \$500.00 to \$1,000.00. All procurements of services and goods in an amount between \$500.00 to \$1,000.00 must have a purchase order approved by the Supervisor, Purchasing Agent and City Council prior to initiating the purchase. Descriptions of items or services will use sufficient and descriptive terminology to allow the reviewer to understand what is being purchased and why, part numbers by themselves are not sufficient.
3. Purchases from \$1,000.00 to \$25,000.00. All procurements of services and goods in an amount over from \$1,000.00 to \$25,000.00 must have a purchase order approved by the Supervisor, Purchasing Agent and City Council Documentation of the solicitation of three quotes or reference to the exemption of those requirements must be attached. (See telephone quote sheet at the end of this policy).
4. Purchases over \$25,000.00. All procurements of services and goods in an amount over \$25,000.00 must be put out for competitive bid to be prepared and approved by the Supervisor, Purchasing Agent and City Council (See section of Competitive Bids for requirements). Purchases over \$25,000.00 require a written contract to be approved in an open meeting.
5. Avoidance of approval and written contract requirements. Purchases shall not be divided into smaller purchases for the purpose of evading the approval process required by this policy, or for the purpose of avoiding the need to obtain a written contract.
6. Competitive Sealed Bids – When Required
 - a. All procurements of goods which are reasonably anticipated to exceed \$25,000.00 shall be obtained by competitive sealed bidding. The City Council may also require competitive sealed bidding for the procurement of goods and services for any amount.
 - b. In the event that bids exceed available funds and the lowest responsive and responsible bid does not exceed funds available by more than five percent, the Board may, where time or economic considerations preclude re-solicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds.
 - c. Content of Invitation for Bids. An invitation for bids shall:
 - i. State that the city is seeking bids for a procurement;

- ii. Contain information on how to contact the person with the most knowledge about the procurement;
 - iii. State the period of time during which bids will be accepted;
 - iv. Describe the manner in which a bid shall be submitted;
 - v. State the address at which a bid may be submitted, and the person to whom the bid should be submitted;
 - vi. Describe the goods or services sought to be procured;
 - vii. List or refer to the objective criteria that will be used to evaluate the bids.
 - viii. To the extent possible, include or reference significant contractual terms and conditions.
 - ix. State the date, time and place for the public opening of all bids.
 - x. An invitation to bid may require attendance at a pre-bid meeting for the purpose of obtaining additional information relevant to the bid. The invitation shall list the time, date and place of any pre-bid meeting that will take place.
 - xi. An invitation to bid may require that a bidder obtain additional specifications and objective criteria too lengthy to publish in the invitation for bids. The invitation to bid shall indicate where such information may be obtained.
- d. All invitations for sealed bids shall be published at least twice in a newspaper of general circulation at least 14 days prior to the deadline for submission of a bid.
 - e. All sealed bids shall be opened by the Mayor or designated representative in an open public meeting, before one or more witnesses, at the time and place indicated in the invitation for bids. The name of the bidder and the amount of each bid shall be recorded and made available to the public. Bids shall not be accepted after the time for submission of a bid has expired.
 - f. The City Council shall reject bids from further evaluation that are: incomplete, illegible, conditional, modify bid requirements, contain additional terms or conditions, divide bid into parts, failed to attend required pre-bid meetings, fail to confirm requirements or specifications, the bidder has a pending dispute with Fountain Green City on a previous project or where the City Council reasonably concludes that the bidder is unable to satisfactorily fulfill the bid requirements or has engaged in unlawful or unethical conduct in attempting to secure the bid. Any bidder whose bid has been rejected may obtain from the City Council/Mayor a written finding stating the specific reason the bid was rejected.
 - g. The City Council shall award the bid/contract to the lowest qualified bidder or the bidder who best satisfies the objective criteria described in the invitation for bids which may include: Experience, performance ratings, inspection of workmanship, suitability, quality, likely compatibility with existing assets or practices, availability, warrantee, references, licensure, proximity or other criteria reasonably specified in the invitation to bid.
 - h. Tied bids may be resolved using any reasonable criteria and at the sole discretion of the City Council.

- i. Fountain Green City may cancel the bid process or reject all bids in whole or in part if it determines that; no bids met bid requirements, there are insufficient funds, the item is no longer needed or the specifications or timing does not meet Fountain Green City's current needs or long term plans. In the event of a bid cancelation the [governing body] shall publicly state the reason for the cancellation and make that information available for public inspection.**
- j. Exemptions from competitive bid requirements may include the following: Sole source providers, service contracts with professionals or specialists, emergency purchases. The Mayor shall sufficiently document the reason for not competitively bidding the procurement and have it approved by the City Council.**
- k. Protests to the bidding process shall be submitted to the Mayor in writing within 5 days. The Mayor will respond to the protest within 5 days of receiving the complaint. The Mayor's decision may be appealed to the City Council in writing within 5 days. The city council may address the appeal at its next regularly scheduled meeting or hold a special meeting to evaluate the merits of the protest appeal.**

Other Items to be considered that may be found in purchasing policies:

- Requirement for W-9's to be submitted for all new vendors
- Exempting Payroll, and Utilities from purchase order requirements
- Allowing Purchasing Agent authority to modify PO's up to a percentage for freight or other unforeseeable items.
- Allowance for preference of local vendors (this is not allowed when expending Federal Funds.
- Requirement for contracts to be reviewed and approved by the County Attorney
- Disposition of Surplus Property
- Records retention for bid documentation
- Anti-collusive bidding

QUOTE SHEET

Product or Service Requested: (Include specific project requirements such as required completion date etc.)

Vendor #1:

Company Name:

Person Contacted: _____ Date Contacted: _____

Method of Contact: ☐ Phone ☐ E-mail ☐ In-person ☐ Other:

Contact Information: Phone: _____ Address: _____

Amount Quoted: (Or attach vendor's written proposal or bid) _____

Vendor #2:

Company Name:

Person Contacted: _____ Date Contacted: _____

Method of Contact: ☐ Phone ☐ E-mail ☐ In-person ☐ Other:

Contact Information: Phone: _____ Address: _____

Amount Quoted: (Or attach vendor's written proposal or bid) _____

Vendor #3:

Company Name:

Person Contacted: _____ Date Contacted: _____

Method of Contact: ☐ Phone ☐ E-mail ☐ In-person ☐ Other:

Contact Information: Phone: _____ Address: _____

Amount Quoted: (Or attach vendor's written proposal or bid) _____

"General Decision Number: UT20230027 01/06/2023

Superseded General Decision Number: UT20220027

State: Utah

Construction Type: Heavy

County: Sanpete County in Utah.

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$16.20 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 2023.
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If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.
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The applicable Executive Order minimum wage rate will be

adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/06/2023

TEAM0222-019 07/01/2021

	Rates	Fringes
TRUCK DRIVER (Articulated).....	\$ 27.36	13.05
TRUCK DRIVER (Concrete Pumping).....	\$ 25.02	13.05
TRUCK DRIVER (Dump Truck, Bottom-end or side)		
Less than 8 cu. yds.....	\$ 24.79	13.05
8 cu. yds. to less than 14 cu. yds.....	\$ 24.94	13.05
14 cu. yds. to less than 35 cu. yds.....	\$ 25.09	13.05
35 cu. yds. to less than 55 cu. yds.....	\$ 25.29	13.05
55 cu. yds. to less than 75 cu. yds.....	\$ 25.49	13.05
75 cu. yds. to less than 95 cu. yds.....	\$ 25.69	13.05
95 cu. yds. to less than 105 cu. yds.....	\$ 25.89	13.05
105 cu. yds. to less than 130 cu. yds.....	\$ 26.01	13.05
TRUCK DRIVER (Flat Rack, Bulk Cement, Semi-Trailers, Mud/Banding and Paint)		
Less than 10 tons.....	\$ 24.69	13.05
10 tons to less than 15 tons.....	\$ 24.84	13.05
15 tons to less than 20 tons.....	\$ 24.42	13.05
20 tons and over.....	\$ 25.09	13.05
Pickup Truck.....	\$ 24.62	13.05

TRUCK DRIVER (Lowboy).....	\$ 27.86	13.05
TRUCK DRIVER (Oil Spreader).....	\$ 27.86	13.05
TRUCK DRIVER (Tiremen and Greaser).....	\$ 25.28	13.05
TRUCK DRIVER (Transit Mix)		
0 cu. yds. to 8 cu. yds.....	\$ 25.02	13.05
Over 8 cu. yds. to 14 cu. yds.....	\$ 25.12	13.05
TRUCK DRIVER (Water, Fuel & Oil Tank)		
less than 1,200 gal.....	\$ 22.70	13.05
1,200 gal. to less than 2,500 gal.....	\$ 22.82	13.05
2,500 gal. to less than 4,000 gal.....	\$ 22.97	13.05
4,000 gal. to less than 6,000 gal.....	\$ 25.24	13.05
6,000 gal. to less than 10,000 gal.....	\$ 23.52	13.05
10,000 gal. to less than 15,000 gal.....	\$ 25.74	13.05
15,000 gal. to less than 20,000 gal.....	\$ 26.26	13.05
20,000 gal. to less than 25,000 gal.....	\$ 26.34	13.05
25,000 gal. and over.....	\$ 26.49	13.05

SUUT2008-029 08/19/2008

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...	\$ 14.00 **	0.56
LABORER: Common or General.....	\$ 11.86 **	1.28
LABORER: Mason Tender - Cement/Concrete.....	\$ 9.00 **	0.36
LABORER: Pipelayer.....	\$ 13.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 16.55	0.00
OPERATOR: Grader/Blade.....	\$ 14.08 **	0.00
OPERATOR: Loader (Front End)....	\$ 15.89 **	4.75
OPERATOR: Roller (Dirt and		

Grade Compaction).....\$ 11.62 ** 0.00

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

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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 <https://www.dol.gov/agencies/whd/government-contracts>.

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)).

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: PLUMo198-005 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.

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 National Office because National Office has 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 DECISIO"

A. APPLICABILITY

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

(1) MINIMUM WAGES

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

(ii) Additional Classifications.

- (A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB control number 1235-0023.)
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

(D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

(2) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(3) **Payrolls and basic records.**

(i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

(ii) **Certified Payroll Reports.**

(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (a)(3)(ii)(b).
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees.

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.
- (7) **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of Eligibility.**
- (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

- (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
- (iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).

(11) Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds **\$100,000**. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

- (1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph B(1) of this paragraph, **in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2)** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.
- (3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.
- (4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs B(1) through (4) of this paragraph.

C. HEALTH AND SAFETY

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds **\$100,000**.

- (1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2)** The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
- (3)** The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

§ 135.38 Section 3 Clause.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

[Browse Previous](#) | [Browse Next](#)

CDBG Build America, Buy America (BABA) Act Clause

- A. The work to be performed under this contract is subject to the Build America, Buy America (BABA) Act requirements of the Infrastructure Investment and Jobs Act of 2021 (IIJA) (Pub. L. 117- 58, §§ 70901-70953). All iron, steel, manufactured products, and construction materials used in the project must be produced or manufactured in the United States, including all such materials installed by any subcontractors or suppliers for this project.
- B. The parties agree to comply with Office of Management and Budget (OMB) regulations in 2 CFR Chapter I, Part 184 and the related requirements in 2 CFR 200.322, which support implementation of BABA requirements for recipients of federal funds. The parties certify they are under no contractual or other impediment that would prevent them from complying.
- C. BABA requirements apply to all expenditures by a Federal agency to a non-federal entity for an infrastructure project. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States. "Infrastructure" includes: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; buildings and real property (including housing). The generation, transportation, and distribution of energy, including electric vehicle charging facilities, are considered infrastructure. Private homes for personal use do not constitute an infrastructure project. "Construction materials" includes generally all raw materials used in construction that is or consists primarily of: metals other than iron/steel (non-ferrous metals); plastic and polymer-based pipe and tube (e.g., PVC pipe); glass; lumber; or drywall.

BABA requirements do not apply to tools, equipment, and supplies brought to a construction site and removed at or before the completion of the project or to equipment and furnishings (such as chairs) used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project. For example, BABA requirements would apply to the funds used to construct a library, but not to funds used to buy books or furniture for the library.

- D. All agreements for professional services related to projects that are subject to the BABA requirements under Title IX of the IIJA. While professional services are not subject to BABA, Grantee understands that it is responsible for ensuring that, absent a waiver by the Housing and Urban Development (HUD), no iron, steel, manufactured products, or construction materials shall be used for the project unless such materials have been produced or manufactured in the United States.

Grantee shall obtain all necessary compliance certificates for work that is within Grantee's scope of work. Failure to do so shall be a default under this agreement. Guidance on complying with BABA is outlined by OMB's Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

- E. A Federal financial assistance program for infrastructure is a program in which funds are used for an infrastructure project, regardless of whether infrastructure is the primary purpose of an award. BABA requirements only apply to infrastructure portions of an award and apply even if Federal funds are not paying for the entire project.
- F. With the concurrence of the Made in America Office, HUD may waive the application of a Buy America preference if:
 - a. One or more iron or steel items, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a nonavailability waiver);
 - b. The inclusion of one or more iron or steel items, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (unreasonable cost waiver); or
 - c. Applying the domestic content procurement preference for one or more iron or steel items, manufactured products, or construction materials would be inconsistent with the public interest (a public interest waiver). Public interest waivers are the most flexible type of waiver, but, like all waivers, must be necessary and appropriately justified.
- G. Noncompliance may result in sanctions, repayment, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

CDBG Build America, Buy America (BABA) Act Acknowledgement

The Contractor acknowledges to and for the benefit of the _____ ("Owner") and the Department of Workforce Services (DWS) that it understands the goods and services under this Agreement are being funded with federal monies and are subject to statutory requirements under the "Build America, Buy America" (BABA) Act.

BABA requires iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants:

- (a) the Contractor has reviewed and understands the Build America, Buy America Requirements;
- (b) all iron and steel, manufactured products, and construction materials used in the project will be or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved; and
- (c) the Contractor will provide, as may be requested by the Owner or DWS: (i) any further verified information, certification, or assurance of compliance with this acknowledgement; or (ii) information necessary to support a waiver of the Build America, Buy America Requirements.

Notwithstanding any other provision of this Agreement, the Contractor's failure to comply with this acknowledgement shall entitle the Owner or DWS, or both, to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney fees) incurred by the Owner or DWS resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from DWS or any damages owed to DWS by the Owner). If the Contractor has no direct contractual privity with DWS, as a lender or awardee to the Owner for the funding of the project, the Owner and the Contractor agree that DWS is a third-party beneficiary and neither this acknowledgement nor any other provision of this Agreement necessary to give this paragraph force or effect shall be amended or waived without the prior written consent of DWS.

CONTRACTOR:

Signature

Date

Name and Title of Authorized Signatory, Please Print or Type

Contractor's Firm