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Labor Standards

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6 Labor Standards

6.1 Introduction

Subrecipients implementing projects involving construction contracts are required to comply with applicable labor-related laws and regulations. The responsibilities, applicable statutes, and steps to ensure compliance are included within this chapter.

Projects involving construction contracts for public facilities, public works, infrastructure, or multifamily housing of eight units or contracts for more than $2,000 must comply with the following laws and regulations:[1]

1. Federal Fair Labor Standards Act (FLSA), 29 USC (United States Code) Chapter 8
2. Davis-Bacon and Related Acts (DBRA); 40 USC Chapter 31, Subchapter IV
3. Copeland Anti-Kickback Act; 18 USC §874 and 40 USC §3145
4. Contract Work Hours and Safety Standards Act (CWHSSA); Field Operations Handbook, Chapter 15
5. State of Oregon Labor Standards and local laws and regulations

Information about each requirement can be found on the U.S. Department of Housing and Urban Development (HUD) website at the following link: hud.gov/program_offices/administration/hudclips/handbooks/sech/13441

These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive procurement process. Activities financed by Community Development Block Grant Disaster Recovery (CDBG-DR) funds that are not “construction work” do not trigger Davis-Bacon requirements, for example:

- Real property acquisition
- Architectural and engineering fees
- Other professional services (legal, accounting, testing[2])
- Other non-construction items (furniture, business licenses, real estate taxes)

Davis-Bacon requirements apply to the **entire** construction contract, even if CDBG-DR funds finance only a **portion** of a construction

[1] Links to the laws and regulations are available in section 6.8.1 Useful Resources – Regulations and Guidance.

[2] Drilling a test well can be considered either a component of construction or a professional service. To determine if Davis-Bacon applies to a test well, please refer to the U.S. Department of Labor (DOL) Field Operations handbook, 15d05, for additional guidance.

Subrecipients are encouraged to contact the ReOregon case lead assigned to the agreement to discuss any questions regarding the applicability of labor standards or the associated recordkeeping requirements.

6.2 Subrecipient Administration of Labor Standards Requirements

The subrecipient should take the following steps to ensure compliance with required labor standards. Each of these tasks is described in detail in the following pages:

Preconstruction Tasks

1. Designate a Labor Compliance Officer
2. Obtain the Effective Wage Determination
3. Confirm the Recommended Construction Contractor's Eligibility Status
4. Document Wage Determination
5. Award the Construction Contract
6. Hold a Preconstruction Conference

Post-start of Construction Tasks

1. Perform Field Inspections for Labor Compliance
2. Conduct Payroll Verification Interviews
3. Maintain Compliance Records

6.2.1 Designate a Labor Compliance Officer

The subrecipient must designate, or name, an appropriate person to act as the labor compliance officer (LCO) to ensure compliance with all requirements and to be the primary contact person for OHCS. The designee may be an employee of the subrecipient or a private consulting firm. The primary qualification of this role is to have a good understanding of HUD's overall compliance requirements with the prevailing federal wage obligations applicable to HUD-funded CDBG-DR programs. For individuals seeking additional training on the requirements and how to perform their respective duties, training is available through the HUD Exchange. A listing of available training is in Appendix A of this chapter.

6.2.2 Obtain the Effective Wage Determination

A wage determination, or "wage decision," is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics, which the DOL has determined to be prevailing in each area for a particular type of construction. Wage determinations can be found at sam.gov/content/wage-determinations by selecting the project type or by the wage determination number. A guide for how to conduct the SAM.gov search for wage determinations is included in Appendix A of this chapter.

Subrecipients should also consult the Oregon Bureau of Labor & Industries (BOLI) website for state prevailing wage rates. **The higher rate will apply to each project**. A link to the BOLI prevailing wage rate determinations and handbook is available in this chapter under Useful Resources – Prevailing Wage Rates. Oregon's wage rates are updated quarterly throughout the year on Jan. 5, April 5, July 5, and Oct. 5.

Subrecipients preparing the wage determination do not need to consider the constantly changing rates. DOL allows the wage decision in effect **10 days** before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be "locked-in" and is also called the "effective" wage decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the "effective" wage decision.

6.2.2.1 Provide Additional Classifications

A wage determination will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the wage decision will be employed on the project, the contractor must request an additional classification.
To request an additional classification contractors can complete the HUD Form 4230A available under Useful Resources.[3] Completed forms can be emailed to whd-cbaconformance_incoming@dol.gov or sent by mail to the following address:

Branch of Construction Wage Determinations
US Department of Labor
200 Constitution Avenue, NW, Room S-3014
Washington, DC 20210

[3] HUD provides separate instructions for how to accurately complete Form 4230A online using the following website: hud.gov/sites/dfiles/OCHCO/documents/4230AInstructions.pdf

If an additional classification is needed that is not included in BOLI's covered occupations, send a written request including the name of the proposed trade, minimum education required, a description of the skills required, and the tools used to the following address:

Prevailing Wage Rate Unit
Wage and Hour Division
1800 SW 1st Avenue, Suite 500
Portland, OR 97201

The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor or subcontractor would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received. After receiving a DOL rate, an LCO should review the payrolls for the trade that required the additional wage rate classification to verify that the tradespersons were paid at minimum the approved rate.

Example: A prime contractor installing sewer lines may find that a boring machine operator is needed by one of its subcontractors, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator.

6.2.2.2 Force Account Labor

Force account labor refers to the use of laborers or mechanics who are employed by the subrecipient in place of a contractor for the CDBG-DR construction project and are generally exempt from the prevailing wage requirements. In such cases, the subrecipient does not have to pay the Davis-Bacon wage rates but can pay the rates paid to staff employees. The amounts paid to workers on force account labor projects are allowable costs of the CDBG-DR program. Please contact OHCS for assistance if you anticipate force account work and to receive pre-approval from OHCS and HUD if necessary.

6.2.2.3 Construction Categories

Federal wage determinations are issued based on construction categories, locations, and special characteristics. When determining a rate category, it is important to know the differences to avoid paying wages from the wrong category. It is possible that more than one wage determination may apply. Choosing the wrong category may leave the subrecipient responsible for restitution and penalties. The construction categories are described as follows:

- **Building:** 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, as well as incidental grading, utilities, and paving.
- **Residential:** Projects involving the construction, alteration, or repair of single-family houses, town houses, or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
- **Highway:** Projects for the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to residential, building, or heavy construction.
- **Heavy:** All construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

6.2.2.4 The Process of Updating Wage Determinations

The DOL gathers information on a year-round basis regarding wage decisions and will often issue an update of a particular wage decision. An update of a wage decision is referred to as a “modification” or “mod.” Less frequently, DOL will issue a new series of wage decisions, called “supersedeas decisions,” with a new wage decision number based on a new series year.

6.2.2.5 Ten-Day Confirmation of the Wage Rate

It is the subrecipient’s responsibility to ensure that the wage decision(s) that is in effect 10 days before the bid opening date was part of the original bid package or becomes a part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are given the opportunity to change their bids before the bid opening, based on the updated wage decision.

The subrecipient may search the DOL website at sam.gov/content/wage-determinations to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date.

If there has been an update, the subrecipient must obtain the updated wage decision and send a copy by addendum to all who obtained a bid package.

The Davis-Bacon requirement to “lock-in” a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.

- For housing: Wage decision "lock-in" at construction contract award or start of construction, whichever occurs first.
- For infrastructure: Wage decision "lock-in" at bid opening provided construction contract is awarded within 90 days. The LCO must re-confirm the wage decision if the construction contract is awarded 90 days beyond the bid opening.

Before awarding a construction contract to any prime contractor, the subrecipient must obtain verification of the wage decision choice. An inquiry made earlier is not sufficient as verification of the wage decision choice. The CDBG-DR program requires that the wage decision verification be obtained after the bid opening and before the award of the construction contract. The subrecipient is still responsible for ensuring the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

If the award of the contract is delayed by more than 90 days, the subrecipient must determine if any wage decision updates have been made by searching the SAM.gov website.

The subrecipient must ensure that the wage decision in effect at the date of the contract award is made a part of the contract between the low bidder and the subrecipient.

If there has been a wage decision update, the selected bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.

6.2.3 Confirm the Recommended Construction Contractor's Eligibility Status

Prior to awarding and executing any construction contract, the subrecipient must ensure that all prime contractors (and their subcontractors) are registered with the Oregon Construction Contractors Board (CCB) and not listed as "debarred" in the System for Award Management on the SAM.gov website. The subrecipient must retain records of these verifications from the CCB and SAM website in local files. Appendix B has the instructions on how to complete the search and save the results for use in the local file.

6.2.3.1 Oregon Construction Contractors Board (CCB)

All persons working on construction projects funded by CDBG-DR must be registered with the CCB or be an employee of a contractor or subcontractor. Recipients must have evidence that all persons on the job as "subcontractors" are in fact "independent contractors" registered with the CCB. Registrations may be checked at oregon.gov/ccb/Pages/index.aspx.

Oregon's Construction Contractors Registration Act, ORS Chapter 701, requires that all persons engaged for compensation in any construction activity involving improvements to real estate must be registered with the Oregon CCB. This includes partnerships, corporations, and self-employed individuals, whether working by the hour, week, job, or "cost plus," and whether by written contract or oral agreement.

Registration is required for any individual or business entity that advertises, offers, bids, or arranges to do or does, any construction, alteration, remodeling, or repair involving residential, commercial, industrial, or public works improvements. Violations can result in civil penalties imposed by the CCB.

Anyone can call the CCB to verify the registration of a contractor.

6.2.3.2 Parties Excluded From Federal Procurement (SAM)

Federal regulations require verification of general (prime) contractor eligibility. To be "eligible" a contractor must not be listed on the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the General Services Administration. Recipients must call their regional coordinator at the department to clear the general contractor before awarding the construction contract. The regional coordinator will check the SAM website and document the contractor's eligibility in the project file. Recipients can search the list themselves at SAM.gov.

At the state level, BOLI maintains a list of contractors ineligible to receive public works contracts at oregon.gov/boli/employers/Pages/pwr-ineligible-contractors.aspx.

6.2.3.3 Independent Contractors

Independent contractors registered as "exempt" are not considered subcontractors on a job covered by the Davis-Bacon Act and HUD regulations.

Those individuals, who may be referred to as "owner operators," cannot certify their own wages and must complete one of the following:

- The payroll reports for their general contractor. The payroll reports for another subcontractor that is not exempt.
- Their own payroll report, and the general or non-exempt subcontractor can co-sign the report.

For more information on the Labor Standards Compliance Requirements read the Federal Labor Standards Requirements in Housing and Urban Development Programs.

6.2.4 Failure to Include or Use of Incorrect Wage Determination

Failure to include the effective wage decision in bid documents or contracts will not relieve the subrecipient or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the subrecipient must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract that makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement:

1. The contractor, even if not at fault, may agree to include the proper wage decision retroactively with no additional compensation, especially if the wage rate changes are minor.
2. The contractor will require a change order to compensate for an increase in wages due to the effective wage decision. Such a change order would be an eligible CDBG-DR cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.

6.2.5 Notification of Subcontractor Awards

The subrecipient's LCO should be notified by the prime contractor of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This informs the LCO of when to expect the submission of subcontractor payrolls.

6.2.6 Award the Construction Contract

Each construction contract subject to Davis-Bacon labor standards requirements must include labor standards compliance clauses and a Davis-Bacon wage decision. The labor standards compliance clauses to include are:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages.
- Obligate the construction contractor to comply with the labor requirements.
- Provide remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages.
- Enable enforcement of labor standards applicable to the project.
- Incorporate HUD Federal Labor Standards Provisions Form HUD-4010 in the construction contract and provide it with preconstruction information.

If the construction contract has not been awarded within 90 days after bid opening, any wage decision modification published prior to the award of the construction contract shall be effective for that construction contract.

6.2.6.1 Responsible Bidder Forms

Oregon state law requires that all public entities awarding public improvement contracts to the lowest responsible bidder complete and submit a Responsible Bidder Determination form to the CCB within 30 days of the award. The CCB has developed a web-based entry system that includes this form and other information. The Public Contracts Responsible Bidder Determination website is ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/.

6.2.6.2 Public Works Bond

All contractors working on public works projects in Oregon with a total project cost of more than $100,000 must obtain and file with the CCB a Public Works Bond of $30,000. This bond is for the exclusive purpose of paying wage claims and must be filed before starting work on a contract or subcontract for a public works project. It must be obtained from a corporate surety authorized to do business in Oregon. A copy of the form is available in Appendix D of this chapter.[4]

The construction contract and every subcontract must contain the provision requiring the Public Works Bond. The general contractor must verify that the subcontractors have filed a Public Works Bond before permitting a subcontractor to start work on a project. Recipients should verify that the contractor and subcontractors have filed the Public Works Bond.

Certified disadvantaged, minority, women, or emerging small business may elect to be exempt during the first year of certification from the Office of Minority, Women and Emerging Small Business (OMWESB). To find out more about the OMWESB program, go to oregon.gov/biz/programs/COBID. If a business chooses to use the OMWESB exemption for the Public Works Bond, the firm must submit the application form to the CCB. The request may be downloaded from ccbed.ccb.state.or.us/WebPDF/CCB/Publications/PWB Application_Exemption.pdf.

6.2.6.3 Retainage

The recipient must comply with the most current Oregon Retainage and Prevailing Wage Law, and the recipient must withhold at least 25% of any amount owed to a contractor if the contractor has not submitted the required certified payroll reports (CPRs). The recipient

[4] The Public Works Bond form is also available through the Oregon Bureau of Labor and Industries website located here: oregon.gov/boli/employers/pages/prevailing-wage.aspx.

will pay the contractor within 14 days after the proper CPR is submitted. Likewise, the prime contractor may withhold funds from a first-tier subcontractor until the subcontractor has submitted the required CPR.

6.2.7 Hold Preconstruction Conference

The subrecipient should hold a preconstruction conference with the prime contractor and all available subcontractors to learn of their responsibilities and obligations concerning labor standards. Identify job site signage requirements. Use of electronic payroll submissions is highly recommended.

If the subrecipient should opt to not have a preconstruction conference, then the subrecipient must use some method of its own choosing to inform contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The preconstruction conference is ideal to initiate the additional classification process as discussed in the following paragraphs.

6.2.8 Perform Field Inspections for Labor Compliance

The subrecipient should understand that the enforcement of labor standards is as important as other requirements of the contract specifications. Failure to comply with the provisions of the labor standards must be corrected by the contractors and subcontractors and may result in the imposition of serious sanctions and penalties.

Subrecipients must conduct compliance reviews to ensure compliance with labor standards. The reviews must include:

- Verifying that required notices are appropriately posted and consider documenting the review with date-stamped photos showing the poster requirements onsite.
- Reviewing all contractors' and subcontractors' CPRs to verify that the correct wages are paid and are signed by the authorized person.
- Conducting hourly wage and rate determinations, including overtime payments.
- Verifying wages through worker interviews.
- Reviewing the use of apprentices, trainees, and helpers.
- Being alert for common falsification indicators, such as the ratio of laborers to mechanics, too few or irregular hours, discrepancies in wage computations, and extraordinary deductions.
- Maintaining documentation of compliance reviews and inspections in the project files.

6.2.8.1 Required Notices

The subrecipient should be checking that the project wage determination and the Davis-Bacon posters are displayed at the job site in an area easily accessible to all employees. The DOL poster is available in English and Spanish. The poster is available through the Office of Labor Relations website at dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf under Resources, Labor Relations Forms.

6.2.8.2 Certified Payroll Submission

Each contractor or subcontractor engaged in work covered by the labor standards must submit to the recipient a weekly CPR for all weeks in which workers are on the job.

Each CPR must be filled in correctly and completely. If there are errors, the form must be resubmitted. The use of electronic forms is highly recommended for ease of transmission, review, and retention.

DOL revised regulations concerning the information reported on payrolls for Davis-Bacon covered projects often includes personally identifiable information. Payroll reports should not include employee addresses and full Social Security numbers. Instead, payrolls must include the employee(s) name and an individual identifying number, for example, the last four digits of the employee's Social Security number. Employers (prime contractors and subcontractors) must maintain the current address and full Social Security number for each employee and must provide this information upon request to the contracting agency or other authorized representation responsible for federal labor standards compliance monitoring.

6.2.8.2.1 No Work Performed Report

Document each week in which no work is performed. This can be done by writing "no work" on the corresponding weekly payroll report. During the project, labor standards compliance will be monitored, and written records can clearly establish that there are no missing payroll reports.

6.2.8.2.2 Certified Payroll Reviews

The subrecipient must review all weekly CPRs. They must ensure wages are paid weekly in an amount no less than identified in the federal prevailing wage determination, applicable to the project. They must also comply with the following:

- Submit on time within 7–10 business days after the reported working week and signed with original signature in ink.

- Complete with names, individual identifying numbers, and job classifications for each employee.
- Report on prime contractors' CPRs, including all "self-employed owner/operator" subcontractors, with no employees.
- List independent contractors, also known as "1099-workers."
- The payroll reports for their general contractor or the payroll reports for another subcontractor that is not exempt.
    - The "owner operator" can complete their own payroll report and the general or non-exempt subcontractor can co-sign the report.
- If a construction company owner works with employees for less than 20% of the time on-site on projects under the Davis-Bacon wage decision, they do not need to be listed on the CPR. The name of the supervisor/owner is enough. Each week, log the total hours on-site and the number spent on Davis-Bacon projects. This helps prove the work in the covered classification was under the limit. When the construction company owner works with employees on-site for over 20% of the time, the Davis-Bacon wage decision applies. In that case, the owner must list their name, individual identifying number, work classification, daily hours worked on-site, total hours worked on-site per week, pay rate, and fringe benefits. The CPRs include the proper wages, fringe, and zone pay for each employee.
- The proper trade classifications are listed on the CPR for each employee.
- The CPRs include only permissible deductions such as: Social Security (SSI), federal tax, state tax, bona fide pre-payment of wages, court-ordered payments, safety requirements, reasonable costs of board and lodging not provided by the contractor (advances). The first time a certified payroll shows that voluntary deductions have been taken out of the employee's wages, a copy of the employee's written authorization to the contractor authorizing the deduction(s) must be provided with the CPR.
- Where fringe benefits (life insurance, health insurance, pension) are paid into plans, block 4(a) on the back of the CPR must be marked or otherwise disclosed.
    - When the hourly wage rate paid is the same as or greater than the hourly wage rate plus fringe required for the applicable decision, and the "Fringe Benefit Paid Into Plan" box on the back of the CPR is marked, the fringe benefit requirement is complete.
    - However, any time a contractor indicates fringe benefits being provided are used to compensate for not paying hourly wages in cash equal to the amount required in the applicable wage decision, the contractor should provide documentation explaining the nature of the hourly dollar value of all fringe benefits being provided.

  - If a recipient has a reason to question whether the contractor is paying fringe benefits as claimed, documentation should be requested from the contractor and verified.
- Where apprentices and trainees are identified on the CPR, documentation must be received with the CPR showing they are officially under an Oregon BOLI program, Federal Bureau of Apprenticeship program, or union program. The documentation must list the employee's name, classification, and rate of pay.
- Ensure that zone pay, if required by the applicable wage decision, is paid to the employee. Each category in the wage decision is established by union negotiation or survey. To calculate zone pay, the recipient must refer to the union agreement applicable to each section of the wage decision.

6.2.8.2.3 Hourly Rate and Wage Determination

Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be checked as well as the accuracy of mathematical calculations pertaining to wages and deductions.

6.2.8.2.4 Project Wage Rate Sheet

The Project Wage Rate Sheet can be used as an easy reference for all work classifications and wage rates that apply to a specific project. A link to the form is available in section 6.8.4 Useful Resources – Forms.

6.2.8.2.5 Fringe Benefits and Zone Pay

The Davis-Bacon prevailing wage is made up of three components: Davis-Bacon basic hourly wage, hourly fringe benefit, and hourly zone pay.

Note: Fringe benefits and, if applicable, zone pay must be paid for all hours worked including overtime hours. Fringe benefits and zone pay are not subject to the halftime premium due as overtime pay.

Fringe Benefits: Along with the basic hourly rate, a fringe benefit amount will be listed for any classification in which fringe benefits were found to be prevailing. This hourly fringe benefit amount may be met by any combination of cash, bona fide third-party benefit plans, or unfunded plans. Funded plan fringe benefits generally include life insurance, health insurance, and pension plans. Unfunded plan benefits generally include vacation, sick leave, and holiday pay.

Contributions to fringe benefit plans must be made quarterly.

- **Cash:** Payment of the required hourly fringe benefit amount in cash to the employee.
- **Funded Plans:** Contractors' fringe benefit contributions made irrevocably to a trustee, third party, or union per a fund, plan, or program can be credited toward meeting this requirement without prior state approval.
- **Unfunded Plans:** Fringe benefit plans are programs that a contractor funds. They are called unfunded plans. The contractor may reasonably anticipate their costs in providing benefits.
- **Zone Pay:** When a trade requires zone pay, this typically means cash to the employee in the amount the hourly zone pay required.

Each category in the wage decision is established by union negotiation or survey. To calculate zone pay, the recipient must refer to the actual union agreement applicable to each section of the wage decision.

- **Fringe Benefit and Zone Pay for Apprentices:** Every apprentice must be paid at not less than the rate specified in the registered apprenticeship program for apprentice's level of progress. This is expressed as a percentage of the journeymen's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the written 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 applicable wage determination for the applicable classification.

6.2.8.2.6 Federal Overtime Requirements

The Contract Work Hours and Safety Standards Act (CWHSSA) requires that persons performing the work of laborers or mechanics under contracts that exceed $100,000 must be paid no less than 1.5 times the basic rate of pay for weeks in which they work more than 40 hours (required Davis-Bacon base rate (no exceptions) x 1.5 + fringe benefits + zone pay = overtime rate). The federal Fair Labor Standards Act (FSLA) requires weekly overtime pay for contracts under the $100,000 threshold.

6.2.8.2.7 State Overtime Requirements

State of Oregon law for overtime pay is different from federal law. The state's statutes ORS 279C.520 and 279C.540 do not exempt federally funded projects from the state overtime law. State overtime law requires payment of overtime to workers who are employed more than 8 hours per day when working on a 5-day, 8-hour schedule or in excess of 10 hours per day when working a 4-day, 10-hour schedule, or for hours worked over 40 hours in any single work week. Overtime must be paid for work on Saturday, Sunday, and six legal holidays. This must be paid regardless of whether 40 hours have been worked in a week.

Note: Oregon's overtime laws do not apply if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

6.2.8.2.8 Compliance With Overtime Laws

The Oregon Business Development Department is not responsible for monitoring and enforcing the state overtime laws.

However, recipients who do not understand or ignore the law are liable for substantial additional costs and/or lawsuits from contractors or workers. Federal rules prohibit the use of grant funds to pay any costs resulting from violations of, or failure to comply with, federal, state, and local laws.

Questions about State Law should be directed to:
Oregon Bureau of Labor and Industries Wage and Hour Division
800 NE Oregon Street Suite 1045
Portland, OR 97232
Email: mailb@boli.state.or.us
971-673-0761
oregon.gov/BOLI/pages/index.aspx

6.2.8.2.9 Investigating Overtime Violations

When a subrecipient determines that a contractor has violated CWHSSA requirements by failing to compensate a worker appropriately for overtime, the following steps must be taken:

- Determine the number of occurrences per employee and calculate the amount due to each employee.
- Inform the prime contractor who is responsible for the correction of all violations in writing of the violation(s), specifying that the violations must be corrected within 30 days and what documentation will be accepted as proof of payment to the underpaid employees. The contractor must report the restitution paid on the corrected/amended CPR, with a signed Statement of Compliance. For each employee paid restitution, the amended CPR must include name, work classification, total number of hours involved, the adjustment rate (difference between the rate that was paid and the required rate), the gross amount of restitution, deductions, and the net amount paid. Each employee paid restitution must sign and date the corrected/amended payroll as receipt of payment.

- Calculate the dollar amount of liquidated damages due (e.g., $10 per violation, per employee, per day), and inform the prime contractor in writing of the amount of the computations.
- File a written request within 60 days for a waiver or reduction of liquidated damages. Any such request shall be accompanied by a written statement of the reasons why the waiver or reduction is justified.
  - **Note:** The only grounds for requesting a waiver or reduction are that the computation of the liquidated damages is incorrect or that the violation occurred inadvertently despite the exercise of due care, and that in the absence of a timely waiver or reduction request, the determination is final. HUD handbook 1344.1, Rev 1, Change 1, Section 3-4(f).
- Submit copies of corrected/amended CPRs with the employee's signature and date for each worker.
- Use the "Start the Process" button on this webpage for violations ranging from $10 to $999.99: complaints.boli.oregon.gov/home/landing
- Submit a labor standards enforcement report (described later in this chapter) if the violation is $1,000 or more. Any waiver of fines must be reported to OHCS.

If the amount of the violation is under $10, the violation does not need to be reported to OHCS.

6.2.9 Conduct Payroll Verification Interviews

During construction, the subrecipient must conduct interviews of workers to determine payroll accuracy and compliance with Davis-Bacon. Employee interviews must be conducted by the subrecipient or grant administrator, not the project engineer. Interview forms must be completed for a representative sample of all worker classifications on the job and must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any.

Interviews should be recorded on the Employee Interview form found here: hud.gov/sites/dfiles/OCHCO/documents/11.pdf (English)

hud.gov/sites/dfiles/OCHCO/documents/11SP.pdf (Spanish)

6.2.9.1 Minimum Interview Requirements

Employees of the following contractors must be interviewed:

1. All prime contractors
2. Subcontractors whose contract award is $100,000 or more
3. Any subcontractor where there are a large number of payroll problems

One interview session will sometimes be sufficient to meet the minimum interview requirements for the above-listed contractors. When an interview session is conducted, interviews of the employees of other subcontractors, not listed above, must be conducted if they are on the job site on the day of the visit.

Example: A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than $100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than $100,000. Employees of all three prime contractors must be interviewed. Employees of the subcontractor whose contract is $100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an added trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors on the job site on any day on which interviews are done for the four required contractors must be interviewed.

If a subcontractor having a subcontract for less than $100,000 is not present on the day of an interview, that subcontractor will not have to be interviewed unless there are payroll problems. If awarded a subcontract for less than $100,000, the future fence subcontractor will not have to be interviewed unless there are payroll problems.

6.2.9.2 Place of Interview

The following guidelines should be followed when deciding on the place to conduct the interview:

- Care must be taken to arrange the session at a time convenient to the employer and employees.
- Workers currently employed may be interviewed during working hours on the job if it can be properly and privately conducted on the premises.
- Interviews may also be conducted at other public places.
- Employees and former employees may also be interviewed by mail.
- An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview form.

- The remaining items on the Record of Employee Interview form should be completed by the subrecipient, with items 1 and 2 to be completed before mailing and items 13 through 17 completed after the employee returns the document by mail.
- In off-site interviews or interviews by mail, the number of interviews required must be the same as the estimated number that would have been obtained during an on-site session.

6.2.9.3 Initiating the Person-to-Person Interview

The interviewer must confirm their identity to the worker. The interviewer must explain that the project is being constructed with federal assistance, which requires that workers be properly paid, and that the interview's purpose is to determine if the required wages are being paid. If a worker does not want to give the information, the interviewer should not insist.

6.2.9.4 Worker Complaint Form

Employees of federally funded projects subject to the requirements of the federal labor standards provisions may file a complaint using the Federal Labor Standards Complaint Form HUD form 4731 form found at hud.gov/sites/dfiles/OCHCO/documents/4731.pdf.

Worker complaints must be kept confidential and be given priority as required by 29 CFR (Code of Federal Regulations) Part 5.6(3).

Additionally, workers may report complaints for state wage rate violations to Oregon BOLI online by going to the following website and clicking the "Start the Process" button at the bottom of the page: complaints.boli.oregon.gov/home/landing.[5]

Workers may also notify OHCS by contacting the Contract Administrator or submitting a complaint online at the following website: oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-FWAA.aspx

[5] If you are filing for owed wages, please include any evidence, documents, or witness statements, and an explanation of your work schedule or calendar detailing the hours worked for each day of your claim. BOLI also accepts evidence by mail at Bureau of Labor & Industries Wage and Hour Division, 1800 SW 1st Ave, Suite 500, Portland, Oregon 97201.

6.2.9.5 Using the Interview Information

After the interviews, compare the wage decision and payroll information to determine if the workers' classification and compensation are correct. If necessary, initiate corrective action.

6.2.9.6 Corrections

The payroll format includes the necessary information for payroll reporting and is a copy of WH-347 from the Wage and Hour Division of DOL. Alternate forms may be used by contractors but must include the necessary information as on WH-347. If a contractor's alternate form is not sufficient, the contractor must provide the necessary information on an acceptable form or a supplementary statement.

Payrolls that are incomplete, such as missing classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

6.2.9.7 Handwritten Corrections

The subrecipient, in reviewing a payroll, cannot make corrections on the face of a payroll or on the Statement of Compliance. The reason is that such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources do not allow the reader certainty as to who made the corrections. If the subrecipient wishes to provide written clarification of a minor payroll item, a note with the reviewer's name and date may be attached.

6.2.10 Maintain Compliance Records

To show compliance with Davis-Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract, if applicable:

- Appointment of Labor Compliance Officer
- Copy of Wage Rate Decision(s)
- Ten-Day Confirmation Form(s)
- Additional Classification request(s)
- Debarment verification printouts from CCB (for each prime contractor and/or subcontractor)
- Debarment verification printouts from SAM (for each prime contractor and/or subcontractor)
- Preconstruction conference report minutes and sign-in sheet(s)

- Payrolls, with evidence of compliance review
- Employee interviews
- Compliance with Section 3, Fair Housing construction, Equal Employment Opportunity, and Historically Underutilized Businesses mandates
- Interim inspection reports
- Wage violations, including the amount and payment of restitution, number of hours, and days
- Liquidated damages fees and documentation (if any)
- Certificate(s) of Construction Completion
- Final Wage Compliance Report(s)

6.3 Prime Contractor Responsibilities

The prime contractor on a project is responsible for proper payment to all laborers and mechanics. This includes those employed by the prime, employed under a subcontract to the prime, or employed under any lower-tier subcontract. The construction contract between the grantee and the prime contractor must require all subcontracts to include clauses imposing the federal labor standards provisions. If the required provisions are not included in the subcontract, the prime contractor is still responsible for underpayments and liquidated damages of subcontractors.

When labor standards violations occur, whether at the contract or subcontract level, the subrecipient will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

6.3.1 Weekly Payroll Submission Requirements and Payroll Numbering

It is the weekly responsibility of each contractor, subcontractor, and any lower-tier subcontractor to submit to the subrecipient numbered weekly payrolls from the time work begins on the project until the work is completed. Contractors must use the payroll form, DOL publication WH-347 available in section 6.8.4 Useful Resources - Forms. The signature page of WH-347, where a contractor certifies wages and fringes, if any, is commonly called the Statement of Compliance, although the document is no longer officially named “Statement of Compliance.” The Statement of Compliance must be a part of each weekly payroll and must be signed by the contractor. A contractor may use their own payroll form or other computer-generated form if all required items of the form are included, but the wording of the Statement of Compliance must be verbatim.

6.3.1.1 Document week(s) in which no work is performed

This can be done by writing “no work” on the weekly payroll report.

During the project, labor standards compliance will be monitored, and written records will clearly establish that there are no missing payroll reports. Submit payrolls of subcontractors via the prime contractor. The prime contractor reviews the subcontractor’s payrolls and may require corrections. The prime contractor forwards the payroll(s) to the subrecipient. Payrolls may be collected by the project engineer for subcontractor’s submission to the subrecipient; however, this does not relieve the prime contractor of the responsibility for review of payrolls.

6.3.2 Addresses and Social Security Numbers

The first and last name of each worker and last four digits of each worker’s Social Security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker’s privacy, the address and full Social Security number are not a required element of payrolls. However, the office or place of recordkeeping of each contractor must retain the full name, address, and Social Security number of each worker to provide to an authorized person requesting the information. Reporting compliance with Section 3 requires the worker’s address information.

6.3.3 Signature on the Statement of Compliance

The Statement of Compliance, which is now the certification part of payroll form WH-347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit a written authorization signed by an officer of the company.

6.3.4 Prompt Submission of Payrolls

The subrecipient should require that all payrolls from the prime contractor and any lower-tier subcontractor be submitted by the prime contractor within 7 working days after the payroll ending date. Payrolls must be examined promptly by the subrecipient so that any problems discovered can be corrected early while contractors are still on the job. Particular attention should be given to payroll review during the initial stages of construction to ensure that the prime contractors understand and are fulfilling their payroll responsibilities. If acceptable payrolls are not submitted promptly, the subrecipient may withhold contractor payment until acceptable payrolls are submitted.

6.3.5 Subcontractor Communication

The subrecipient's contractual relationship is with the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. There is not a direct relationship between the subrecipient and subcontractor. The subrecipient should only communicate with the prime construction contractor.

6.3.6 Concurrent Jobs

The payrolls must show only the regular and overtime hours worked on the CDBG-DR project. If an employee works at other job sites other than the CDBG-DR project, do not report those hours on the payroll. However, the gross pay from all job sites must be shown on the payroll.

6.3.7 Wage Rates and Proper Classification

Check payrolls against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to ensure compliance with prevailing wage requirements for rates and proper worker classifications. Check the proper calculation of straight time and "time and a half" rates for overtime hours and the mathematical accuracy of wage and deduction calculations.

6.3.8 Employees Performing Work in More Than One Classification

Pay a person employed as a laborer or mechanic performing work in more than one job classification at least the required rate for the actual hours spent in each classification. When using "split" payrolls, apportion the hours worked at more than one classification in a workday according to the hours worked in each classification.

To avoid the extra work of split payroll reporting, pay the worker the highest rate of the multiple classifications for the work performed in each workday.

Example: Joe, a backhoe operator, gets off his backhoe to try to find a buried water line. He uses a shovel most of the morning — which is the work of a laborer — and finally finds the water line. Later, Joe mounts the backhoe and digs a trench for a sewer line, carefully avoiding the water line. The employer may list Joe as a backhoe operator if Joe is paid the backhoe rate, which is the higher of the two possible rates.

6.3.9 Working Foreman Requirements

A foreman who spends 20% of time on labor or mechanic work must follow Davis-Bacon rules. Their work type should align with wage decisions. If a foreman is salaried and labeled as "salary" on the payroll, they must earn the prevailing wage for their role. This salary needs to appear on payroll. For projects with a lot of overtime, extra checks are needed to ensure pay meets Davis-Bacon and CWHSSA standards.

Only the exact classifications appearing on the federal wage decision or additional classifications requested should be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met.

Example: “Operator” is a generic classification; however, “backhoe” is on the wage decision and would be a proper classification.

6.4 Summary of Applicable Laws

6.4.1 Federal Fair Labor Standards Act

The FLSA (29 U.S.C. §201 et seq.) establishes standards for employment and employee pay by business organizations. The FLSA is relevant to the construction industry.

A business in the construction industry must have two or more employees and have an annual gross sales volume of $500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between the states (“interstate commerce”). Any person who works on or otherwise handles goods that are moving in interstate commerce or works on expanding existing commerce facilities is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

If an employer performs work on a federally financed or financially assisted project, a different and somewhat stricter set of labor standards applies. Typically, this would require that employees performing on such contracts be paid a “prevailing wage rate.” If state labor and wage requirements are greater, contractors must pay the higher of the two prevailing wage rates.

6.4.2 Section 110 of the Housing and Community Development Act of 1974

Section 110 of the Housing and Community Development Act (HCDA) of 1974, as amended and as implemented in 24 CFR §570.603, extends coverage of Davis-Bacon to construction programs and projects financed by CDBG-DR funds, including new construction.

6.4.3 Davis-Bacon

Davis-Bacon applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon also applies to residential construction that consists of projects involving the construction, alteration, or repair of eight or more separate, contiguous single-family houses, operated by a single entity as a single project or eight or more units in a single structure. Davis-Bacon does not apply to the rehabilitation or reconstruction of residential structures with fewer than eight units or force account labor (construction carried out by employees of the grantee or subrecipient).

All laborers and mechanics employed by the contractors and subcontractors on construction work financed in whole or in part with CDBG-DR or CDBG-MIT assistance shall be paid wages at rates no less than those prevailing on similar construction in the locality. The Secretary of Labor, in accordance with the Davis-Bacon Act, will determine these rates. However, Oregon's prevailing wage rates, as determined by BOLI, may apply. Use the higher of the two rates.

HUD published the following guidance on the applicability of Labor Standards to activities funded by CDBG-DR: hud.gov/sites/documents/CDBGCHAPTER16.PDF

The principal requirements of Davis-Bacon are:

- Recipients must include a copy of the prevailing wage rate determination, can be downloaded from SAM.gov, in the invitation to bid. For instructions, please see Appendix A of this chapter.
- Recipients must include the Federal Labor Standards Provisions Form HUD-4010 in the invitation to bid. A link to the form is available in section 6.8.4 Useful Resources – Forms.
- Recipients may only award construction contracts to eligible contractors and subcontractors. These contractors must agree to comply with the labor standards provisions.

- Contractors must pay laborers the wage rate determination or the Oregon BOLI rate, whichever is greater. The determination must be made at the time of procurement.
- Contractors must pay wages at least once a week.

Exceptions to the requirements:

1. For construction contracts at or below $2,000, separating a project into individual contracts below $2,000 to circumvent the Davis-Bacon and Copeland Act requirements is not allowed.
2. Rehabilitation or construction of residential structures with fewer than eight units.
3. Simple water and sewer line extensions without pumps, tanks, etc. may also be exempt, but water and sewer line construction will typically be categorized as heavy construction.
4. For separate and distinct projects, contact OHCS for guidance.
5. Contracts solely for demolition when no federally funded construction is anticipated on the site.

When in doubt about the applicability of Davis-Bacon, consult ReOregon Program Staff.

Davis-Bacon Act (40 U.S.C. §3141, et seq., 276a to 276 a-7 as implemented in 29 CFR Part 5) provides that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title (in this case the CDBG-DR and CDBG-MIT programs) shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

Construction contracts for public buildings, public works, and infrastructure of more than $2,000 awarded by subrecipients under Oregon's CDBG-DR program shall include a compliance provision for Davis-Bacon and associated DOL regulations. The principal requirements are:

1. The subrecipient must include a copy of the current prevailing wage rate decision in each invitation for bids, request for proposal, and purchase order when applicable.
2. The subrecipient may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis and will comply with other labor standards.
3. Contractors must pay laborers the wage rate determined by DOL or Oregon BOLI to be the prevailing rate in that labor market.
4. Contractors must submit weekly payrolls.

Three special classes of employees may be used on projects subject to Davis-Bacon wage rates and be compensated at less than the Davis-Bacon prevailing wages.

These classes are:

1. **Apprentices**: must be individually registered in a bona fide apprenticeship program in which the contractor participates and that the DOL approves. Apprentices must also satisfy other conditions specified in the Labor Standards Contract Provisions.
2. **Trainees**: must be in a DOL-approved training program and satisfy other conditions specified in the Labor Standards Contract Provisions.
3. **Volunteers**: on a CDBG-DR project must meet the criteria found in 24 CFR (Code of Federal Regulations) Part 70.

When any of these employee classes appear on the contractor's weekly payrolls, the contractor must provide documentation necessary to allow the subrecipient to comply with the Davis-Bacon wage rate determination.

State requirements on the use of apprentices and trainees, licensing, procurement requirements, and wage standards must be researched and followed, including local code and regulations.

Additionally, the subrecipient must see that the "Notice to All Employees Working on Federal or Federally Financed Construction Projects," and "Know Your Rights" posters are displayed at the job site. Posters are available to be downloaded at dol.gov/general/topics/posters.

6.4.3.1 Davis-Bacon Final Rule (Effective Oct. 23, 2023)

On Aug. 23, 2023, DOL published the final rule, “Updating the Davis-Bacon and Related Acts Regulations.” Below is a summary of the updates in the final rule. Many of the amendments are regulatory changes that codify DOL's current practices and interpretations of existing regulations. These changes do not, in practical terms, impose new obligations on contractors or contracting agencies. The following link provides a comparison of the “old” versus “new” rule for reference purposes: dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts

NOTE: The following updates included in the regulations apply to contracts entered after Oct. 23, 2023.

6.4.3.2 Frequently Conformed Rates

Section III.B.1.xii of the final rule introduced the category of Frequently Conformed Rates to Davis-Bacon wage determinations. Previously, DOL was constrained in its ability to issue wage rates by strict thresholds of data availability. If there weren't enough data available in an area for a particular classification, DOL could not issue a wage rate for that classification in its general wage decision. This led to frequent Requests for Additional Wage Determination for certain wage classifications in those areas. The final rule gave DOL the ability to issue wage determinations for these requested classifications with less data. From a compliance standpoint, Frequently Conformed Rates will be treated the same as "normal" rates in a wage decision, and contractors must comply with them.

6.4.3.3 Fringe Benefits

Section III.B.3.xii of the final rule revised several provisions related to fringe benefits and Davis-Bacon Credits, including the annualization of contributions to certain fringe benefit plans for workers engaged in both Davis-Bacon and non- Davis-Bacon work, criteria for categorizing non-funded benefit plans, and requirements for crediting the cost of apprenticeship programs against fringe benefit obligations.

6.4.3.4 Omission of Required Clauses and Wage Determinations and "Operation of Law"

Section III.B.3.iii(F) of the final rule added language to 29 CFR 5.5 to "make effective by operation a contract clause or wage determination that was wrongly omitted from the contract." This rule should be considered with the language added to local Davis-Bacon policy to not supersede HUD or DOL regulations, and where the two contradict, the regulations will prevail.

6.4.3.5 Withholding

Section III.B.3.xxiii of the final rule clarified DOL's withholding remedy for underpayments. Under the final rule, cross-withholding is allowed on any contract held by the same prime contractor, even if the contract was awarded or assisted by a different agency than the agency that awarded or assisted the contract on which violations necessitating the withholding occurred. The final rule also established the ability to cross-withhold from entities other than the entity that directly entered the contract with the contracting agency. Under the final rule, when a prime contractor uses a single-purpose entity, joint venture, or other similar vehicle to secure Davis-Bacon-covered contracts, DOL may pursue cross-withholding on any other contract held by one of the related entities. Lastly, the final rule added a provision explaining that withholding for workers' back wages takes priority over various other competing claims.

6.4.3.6 Anti-Retaliation

Section III.B.3.xix of the final rule added new anti-retaliation provisions to 29 CFR Part 5 in the form of 29 CFR 5.5(a)(11) and (b)(5) and 5.18. These provisions prohibit retaliation against workers or job applicants for engaging in protected activities such as making a complaint or cooperating in a DOL Wage and Hour Division investigation under Davis-Bacon, including the CWHSSA. They also enforce remedies for workers and job applicants who have been discriminated against in any manner for engaging in, or being perceived to have engaged in, protected activities.

6.4.3.7 Trainees

Section III.B.3.ii(E) of the final rule removed references to trainees from 29 CFR 5.2(n).

6.4.3.8 Demolition

Section III.B.3.ii(C) of the final rule clarified the circumstances under which demolition work is exempt from Davis-Bacon wage requirements. Under the final rule, demolition is only exempt from Davis-Bacon when the demolition work does not constitute construction or repair and when no future construction or repair is planned or contemplated. Demolition is always subject to Davis-Bacon when performed under the same contract as construction or when future construction is anticipated on the same site.

6.4.3.9 Payroll Signatures

Section III.B.3.iii(B)(2) codified DOL’s longstanding policy that certified payrolls may be submitted electronically, “provided that the electronic submission system requires a legally valid electronic signature…and the contracting agency or prime contractor permits other methods of payroll submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.” The final rule further clarified that, “to be valid, the contractor's signature on the certified payroll must either be an original handwritten signature or a legally valid electronic signature. Both methods are sufficient for compliance with the Copeland Act.”

6.4.4 Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building of work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which the person is entitled under the person's contract of employment. The Act also provides for the submission of weekly CPRs by all contractors and subcontractors.

All contracts for construction, reconstruction, or repair (over $2,000) must include the following prohibition:

> "No contractor or subcontractor shall induce, by any means, any person employed in such publicly funded construction, reconstruction, or repair to give up any part of the compensation to which the person is otherwise entitled except for authorized payroll deductions."

Subrecipients should conduct confidential interviews with employees to assure compliance with the terms of this law. The contractor must retain payroll records and submit weekly certified payrolls documenting compliance.

6.4.5 Contract Work Hours and Safety Standards Act

The CWHSSA (40 U.S.C. §327 et seq.) and FLSA state that no contract work may permit any laborer or mechanic to work over 40 hours in a workweek unless they are paid at least 1.5 times their basic rate for all hours worked. If a violation occurs, the contractor or subcontract shall be liable for unpaid wages and liable to the United States for liquidated damages.

All construction contracts in excess of $2,000 and other contracts in excess of $2,500 involving the employment of mechanics or laborers must comply with the following provisions of this law:

1. Contractors shall compute the wages of each laborer and mechanic based on a standard workweek of 40 hours.
2. Work beyond this standard is allowed if paid at least 1.5 times the basic rate for the extra hours.
3. Contractors may not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his/her health or safety as determined under construction safety or health standards issued by DOL.

6.4.6 State Law and Local Law and Regulations

6.4.6.1 Use of Oregon Prevailing Wage

The Oregon prevailing wage rate (PWR) applies to all construction projects of $50,000 or more, including those that are federally funded. The Oregon PWR applies to public works projects subject to ORS 279C.800 and Davis-Bacon Act (40 U.S.C. 276a). For each specific job classification, the following applies:

1. If the Oregon PWR is higher than the federal prevailing wage rate, the prime contractor and every subcontractor on the project shall pay at least the Oregon PWR (as required by ORS 279C.800 and 279C.870).
2. If the federal Davis-Bacon wage rate is higher than the Oregon PWR, the prime contractor and every subcontractor on the project shall pay at least the federal PWR as required by Davis-Bacon.

Both Davis-Bacon rates[6] and the Oregon PWR must be included in the construction contracts funded, in whole or in part, with CDBG-DR funds.

6.4.7 Updating Wage Rates After Award

Section III.B.1.vi(B) of the final rule clarified circumstances in which a project is required to adopt Davis-Bacon wage rates updated after a contract had been awarded. Typically, wage rates apply for the duration of construction; however, the final rule identified three scenarios in which this is not the case:

1. **New out-of-scope construction:** refers to instances in which a contract is modified to include "additional, substantial construction, alteration, and/or repair work not within the scope of work of the original contract."
2. **Additional time not originally obligated:** refers to a contract changed to "require the contractor to perform work for an additional period not originally obligated, including where an agency exercises an option provision to unilaterally extend the term of a contract." The new section instructs subrecipients to review contract change orders to determine if they fall into either category. If so, subrecipients must include the current wage decision in the change order and contractors must comply with the current wage rates.

[6] Making Davis-Bacon Work (2006): hud.gov/sites/documents/21811_4812-LR.PDF

3. **Long-term, as-needed contracts:** includes blanket purchase agreements (BPAs) and indefinite delivery indefinite quantities (IDIQs). Davis-Bacon wage rates apply to BPAs and IDIQs, and wage rates for contracts procured through BPAs and IDIQs must be updated annually. Task orders issued under these types of contracts must incorporate the most recent wage determination modification in the master contract at the time the task order is awarded.

6.4.8 Recordkeeping

OHCS policy requires record retention of 6 years after closeout. Section III.B.3.iii(B)(1) of the final rule clarified the list of project records that must be retained for 6 years after closeout of the entire grant. Subrecipients will be held to the 6-year retention period.

6.4.9 Updated Contract Provisions

Due to the changes made by the final rule, HUD has updated form HUD-4010 to be reflected in contracts effective Oct. 23, 2023. A link to the form is also available in section 6.8.4 Useful Resources – Forms.

6.5 Helpers, Apprentices, Trainees, and Prisoners

6.5.1 Helpers

"Helpers" — workers who use tools in assisting mechanics and are paid below the minimum rates for mechanics — is not an acceptable job classification. Apprentices and trainees are recognized as the individuals who perform less-skilled craft work during their training period. If "helpers" are to be employed on the project, they must be identified in a request for authorization of additional classification and rate for wage determination and paid the rate considered appropriate by DOL.

6.5.2 Apprentices

Apprentices are permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprenticeship program registered with the DOL Office of Apprenticeship. If a worker is an apprentice, the contractor must submit a copy of their apprenticeship papers with the first payroll that includes that worker.

Any worker listed on a payroll at an apprentice wage rate who is not a trainee as defined in the following paragraph or is not registered as an apprentice shall be paid the wage rate determined by the Secretary of Labor for the classification of work performed.

The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision.

6.5.3 Trainees

Trainees are permitted to work at less than the predetermined rate for the work performed only if they are employed by and registered in a program that has received prior approval. This must be certified by the federal Office of Apprenticeship or Oregon BOLI Apprenticeship and Training Division.

Trainees must be paid at not less than the rate specified in the approved program for their level of progress or a percentage of the associated mechanics rate as listed on the wage decision.

6.5.4 Prisoners

There is no prohibition against the use of prison inmate labor on federally funded projects, but they do not qualify as volunteers. The Davis-Bacon wage requirements would apply.

6.6 Terminology and Associated Davis-Bacon Requirements

Cleaning: Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.

Contractor's Guide to Davis-Bacon: The HUD guidebook, "A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects," is a recommended (but not required) publication that the subrecipient may wish to distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grant recipients, construction contractors, and those who prepare contractor payrolls.

Debarment: An Action taken by a debarring official under 9.406 to exclude a contractor from federal contracting and federal-approved subcontracting for a reasonable, specified period; a contractor that is excluded is debarred.

Demolition: Stand-alone demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages. If subsequent construction work is subject to Davis-Bacon requirements, then the demolition would likewise be covered by Davis-Bacon requirements. For further information, refer to Labor Relations Letter LR 2009-01 dated Aug. 12, 2009, available in section 6.8.1 Useful Resources – Regulations and Guidance.

Drilling: Exploratory drilling is not covered by the federal labor standards requirements. However, drilling of wells for water or oil is covered by the federal labor standards requirements.

Equipment Installation: In rare instances, for small prime construction contracts for just the purchase of installation of a single piece of equipment, if the cost of the installation of the equipment does not exceed 13% of the purchase price of the equipment, generally Davis-Bacon does not apply. Be careful though, as the purchase of most equipment will trigger Davis-Bacon (e.g., the purchase of an elevator and then installation.)

Family Members: Related to contractor payrolls. There are no exceptions to labor requirements on the basis of family relationships. Relatives performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.

Force Account: Work conducted by the subrecipient's employees is generally exempt from the prevailing federal wage requirements. Please contact the Department's CDBG-DR regional project manager for assistance if force account work is anticipated for pre-approval from OHCS and HUD if necessary.

Investigation: Non-routine examinations resulting from credible allegations of serious violations.

Items to Be Posted at the Job Site: The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or in prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should simplify the contents of the wage decision. A copy of this form, along with instructions, is available in section 6.8.5.

Laborers and Mechanics: Workers whose duties are manual or physical as distinguished from managerial. Mechanics perform the work of a recognized trade, such as an electrician, while laborers perform tasks such as cleaning and shoveling that are not normally thought of as a recognized trade. On a wage decision, a classification that is not “laborer” is automatically considered as a “mechanic” classification.

Overtime Pay: There are no exceptions to this rule. Overtime pay equals the federally required base rate of pay x 1.5 + fringe benefits + zone pay.

Piece Rate Work: Lump sum construction contracts usually found in subcontractor or owner/operator contracts. To determine compliance, divide the total hours worked by the contract price to determine the hourly rate of pay.

Precutting and Prefabrication: Precutting or prefabrication of parts to be used in construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.

Prevailing Wages: The total minimum compensation, including the base rate and fringe benefits, as required under Davis-Bacon for a given classification of worker as determined by DOL in a document called a wage decision. See subsection 6.4.2 for further discussion on wage decisions.

Site of Work: The site of work is limited to the physical place or places where construction occurs and to adjacent or nearby property used by the contractor or subcontractor that can reasonably be included because of proximity. This area is where the Davis-Bacon wage rates apply.

Supply and Installation: The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. For construction work involving installation of equipment, if the cost of installation is 13% or less of the total cost of the equipment financed by CDBG-DR, this is an incidental cost. The installation is not subject to Davis-Bacon wage rates (HUD Office of Labor Relations notice dated Nov. 15, 1988).

Truck Drivers: Truck drivers of a contractor or subcontractor are covered by Davis-Bacon when performing work on the “site of work” or transporting materials and/or supplies between the construction site and a facility considered to be part of the “site of work.” Truck drivers are not covered when the driver of a contractor or subcontractor is hauling materials to or from a Davis-Bacon job from a commercial supply facility when they are off the “site of work.”

Work Week:

- The federal workweek is a 7-day period. Overtime pay must be paid for hours worked more than 40 hours per week.
- The Oregon BOLI workweek is a 5-day period unless the schedule of work is for 10-hour days. For a 5-day workweek, overtime must be paid for all hours worked more than 8 hours per day. For a 4-day workweek, overtime must be paid for all hours worked more than 10 hours per day. Regardless, if 40 hours have not been worked in the week, the state requires overtime to be paid for all work on Saturday, Sunday, and six legal holidays.

6.7 Checklist for Labor Standards Compliance

Ensure that the state has issued the Environmental Clearance — Release of Funds — notice for this project prior to awarding any construction contracts.

Note: Any form contained as a resource to this Chapter that states submit to HUD MUST be interpreted as submitting the form to OHCS, not HUD.

1. OHCS has reviewed and approved bid documents; this must be done 10 days before the bid advertisement.
2. Include Federal Labor Standards Provisions (HUD-4010) and applicable wage rates (higher of either Davis-Bacon rates or the Oregon BOLI rates) in all bid and contract documents.
3. Verify wage rates through BOLI and SAM.gov 10 days prior to bid opening; notify plan holders of any modifications.
4. Prior to awarding the construction contract:
   i. Verify with OHCS the general contractor eligibility (registration with SAM.gov and the CCB and not on the Excluded Parties List).
   ii. Verify with Oregon BOLI's Ineligible List.
5. Assure that general contractor has filed a $30,000 public works bond with the CCB.
6. Submit a Responsible Bidder Determination form to the CCB.
7. Contact OHCS representative at least 10 days before the scheduled date of preconstruction conference/meeting with general contractor to discuss labor standards compliance.
8. Request materials for preconstruction conference/meeting from OHCS at least 10 days before scheduled conference.
9. Hold preconstruction conference/meeting attended by general (prime) contractor and subcontractors.

10. Obtain signature of general contractor on preconstruction conference notes; contractor and OHCS receive copies, and recipient keeps original in local project file.
11. Submit Notice of Construction Contract Award and Start of Construction and preconstruction conference notes/minutes, certified payroll reports, and all necessary first draw requirements to OHCS prior to requesting grant funds for construction.
12. Post at the job site:
    i. Federally required DOL Wage and Hour Division Posters[7] including those for federally financed construction projects
    ii. Davis-Bacon wage determination along with the DOL-approved additional classification(s)
    iii. Applicable Oregon Workers' Rights posters[8]
    iv. Applicable Oregon BOLI's wage rate
    v. Project sign (if required)
13. Contractor/Subcontractor Agreement and Fringe Benefit Summary forms received by the subrecipient prior to release of grant funds to prime contractor for work performed by the subcontractors.
14. Information collected about "unfunded" fringe benefit plans prior to contractors showing fringe benefit payments on payroll reports.
15. Weekly certified payroll reports (on approved forms) submitted as required and reviewed for correct wages (including overtime pay).
16. Apprenticeship documentation submitted with first payroll on which apprentice is shown.
17. Employee interviews are conducted at least once per month during construction and with no less than one employee for every trade at the site. Information compared on interview forms must agree with the corresponding payroll report.
18. Payroll violations and employee complaints investigated and resolved.

[7] A link to the federally required posters is available in section 6.8.5 Useful Resources – Posters.

[8] A link to Oregon's required workers' rights posters is available in section 6.8.5 Useful Resources – Posters. Additionally, poster requirements for Oregon are updated annually July 1.

6.8 Useful Resources

6.8.1 Regulations and Guidance

- Davis-Bacon and Related Acts:
  dol.gov/agencies/whd/laws-and-regulations/laws/dbra
- Copeland Anti-Kickback Act: 18 USC §874, 40 USC §3145
  uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section874&num=0&edition=prelim
  uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title40-section3145&num=0&edition=prelim
- CWHSSA: Field Operations Handbook, Chapter 15
  dol.gov/agencies/whd/field-operations-handbook/Chapter-15
- Comparison Chart for Recent Changes in Labor Standards:
  dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts
- Federal Fair Labor Standards Act: 29 USC Chapter 8
  uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim
- Federal Labor Standards Requirements in Housing and Urban Development Programs (1344.1):
  hud.gov/program_offices/administration/hudclips/handbooks/sech/13441
- Final Rule DBRA Effective Oct. 23, 2023:
  Updating the Davis-Bacon and Related Acts Regulations
- Labor Relations Notice LR-09-01 Davis-Bacon Applicability to Demolition Work:
  hud.gov/sites/dfiles/OCHCO/documents/LR-2009-01.pdf
- Oregon Revised Statute Condition Concerning Hours of Labor (ORS 279C.520):
  oregon.public.law/statutes/ors_279c.520
- Oregon Revised Statute Condition Concerning Employment of Apprentices to Perform Percentage of Work Hours that Workers in Apprenticeable Occupations Perform on Public Improvements (ORS 279C.533):
  oregon.public.law/statutes/ors_279c.533
- Oregon Revised Statute Maximum Hours of Labor on Public Contracts:
  oregon.public.law/statutes/ors_279c.540
- HUD Guidance regarding Davis Bacon for CDBG projects:
  hud.gov/sites/documents/CDBGCHAPTER16.PDF

- HUD Guidance for Davis-Bacon and Labor Standards: Agency/Contractor Guide: hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Agency-and-Contractor-Guide.pdf
- HUD Guidance for Davis-Bacon and Labor Standards: Contractor Guide Addendum: hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Contractor-Guide-Addendum.pdf
- HUD Guidance regarding "Covered Demolition" projects: hud.gov/sites/dfiles/OCHCO/documents/LR-2009-01.pdf
- Oregon Construction Contractors Board: oregon.gov/ccb/Pages/index.aspx
- Oregon Bureau of Labor and Industries (BOLI): oregon.gov/BOLI/pages/index.aspx

6.8.2 Prevailing Wage Rates

- Federal Prevailing Wage Determination Search: sam.gov/content/wage-determinations
- Oregon Prevailing Wage determination: oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx
- Oregon Definitions of Covered Occupations for Public Works Contracts in Oregon: oregon.gov/boli/employers/Documents/OccupationalDefinitions_070118.pdf

6.8.3 Debarment Verification

- Oregon Debarred Contractors Listing: oregon.gov/boli/employers/pages/pwr-ineligible-contractors.aspx
- SAM.GOV Federal Debarment Search: sam.gov/search/

6.8.4 Forms

- Certified Payroll Form (WH-347): dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdfh
- Employee Interview Form HUD-11: hud.gov/sites/dfiles/OCHCO/documents/11.pdf
- Federal Labor Standards Provisions Form HUD-4010: hud.gov/sites/dfiles/OCHCO/documents/4010.pdf
- Project Wage Rate Sheet: hud.gov/sites/dfiles/OCHCO/documents/4720.doc

- Oregon Reporting Overtime Payment Violations: oregon.gov/boli/workers/pages/wage-and-hour-complaint-form.aspx#:~:text=If%20your%20rights%20are%20being,call%20971%2D245%2D3844
- Oregon Responsible Bidders Form: ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/
- Oregon Public Works Bond Form: oregon.gov/boli/employers/Documents/public-works-bond.doc
- Oregon Public Works Bond Exemption for Minority, Woman, Service Disabled Veteran, or Emerging Small Business Form: oregon.gov/ccb/Documents/PWB_Application_Exemption.pdf
- Report of Additional Classification and Rate Form HUD-4230A: hud.gov/sites/dfiles/OCHCO/documents/4230A.pdf
- Worker Complaint Form: hud.gov/sites/dfiles/OCHCO/documents/4731.pdf

6.8.5 Posters

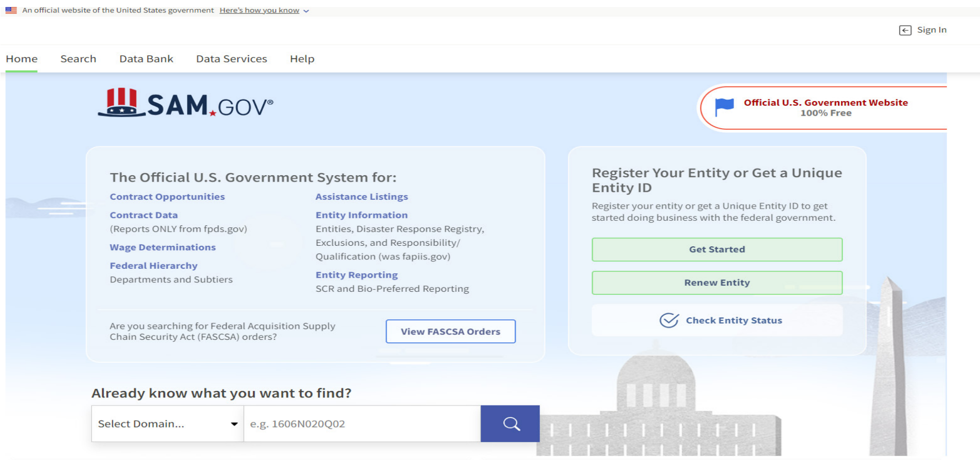
- Federal Required Job Site Posters: dol.gov/general/topics/posters
- Oregon Required Job Site Posters: oregon.gov/boli/employers/Pages/required-worksite-postings.aspx

6.8.6 External Training

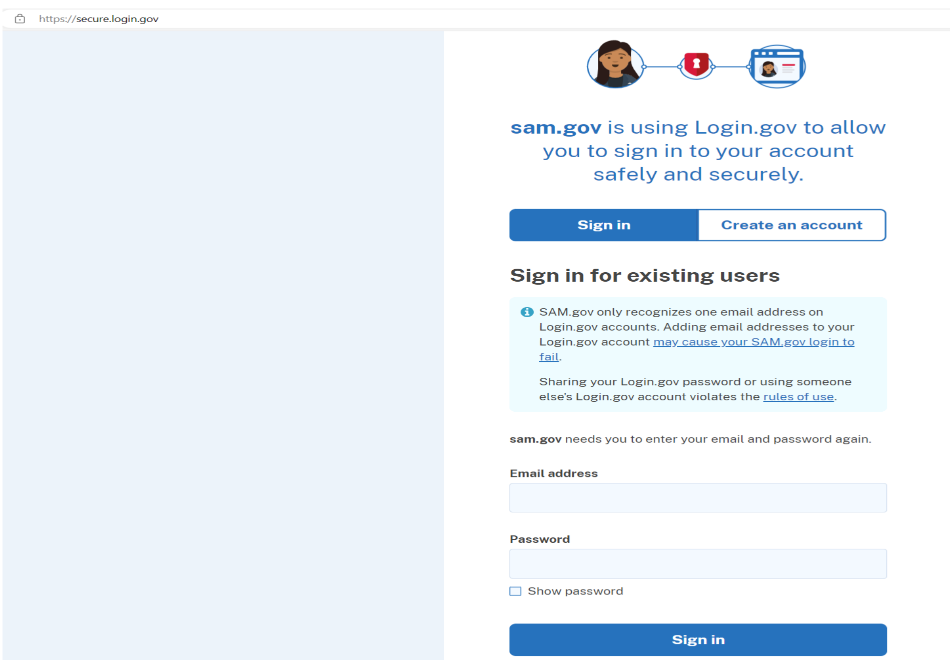
- Contractor Training Materials: portal.hud.gov/hudportal/HUD?src=/states/shared/working/r10/olr/trainingcontractors
- Davis-Bacon Labor Standards 101 for Labor Contract Administrators: An Introduction to Federal Labor Standards hudexchange.info/trainings/courses/davis-bacon-labor-standards-101-for-lcas-an-introduction-to-federal-labor-standards1/
- Davis-Bacon Labor Standards: Payroll Analysis hudexchange.info/trainings/courses/davis-bacon-labor-standards-payroll-analysis/

6.9 Appendix A: SAM.gov Active Registration

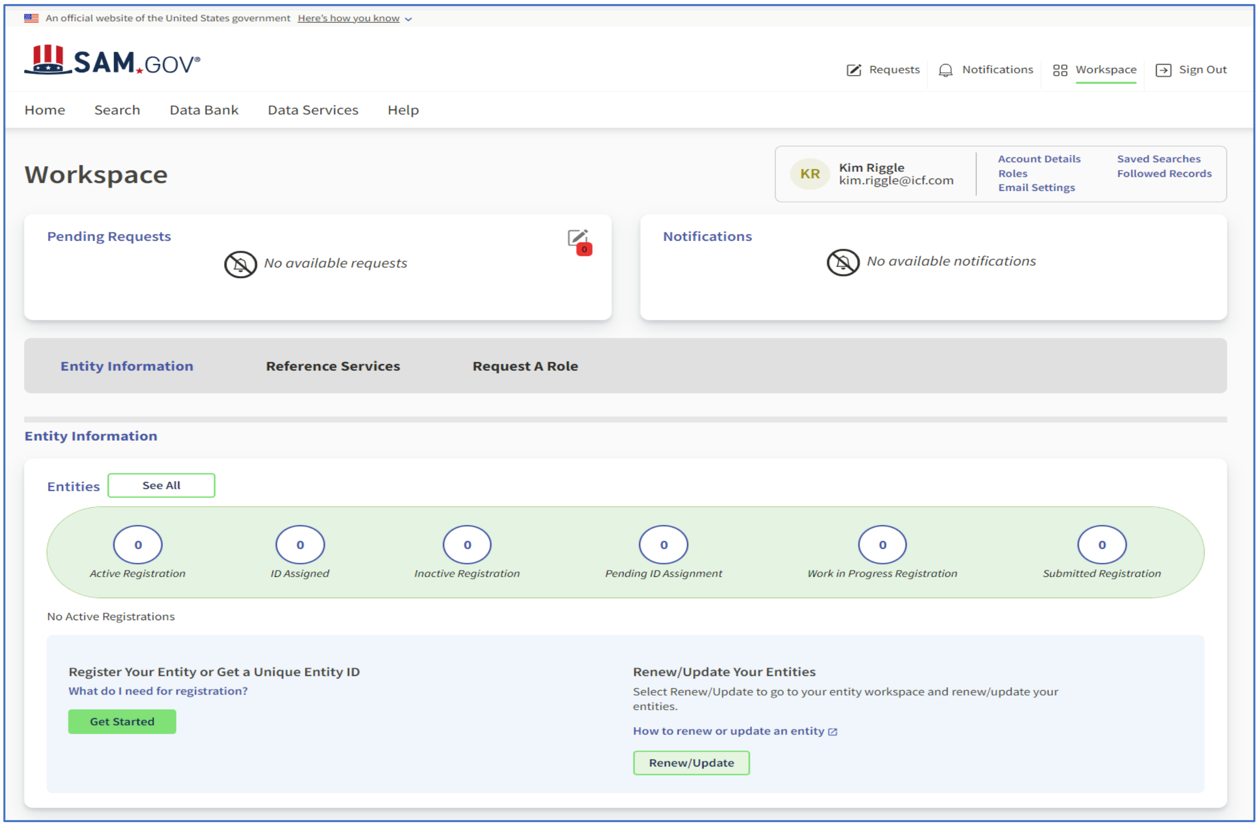
Create a SAM.gov account if you do not have one already and sign in.



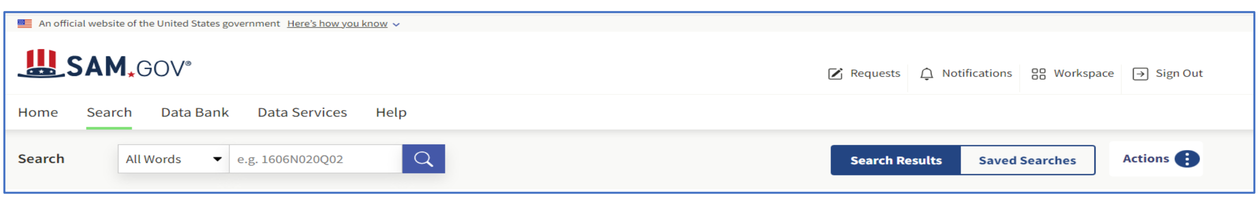
Enter your login credentials.



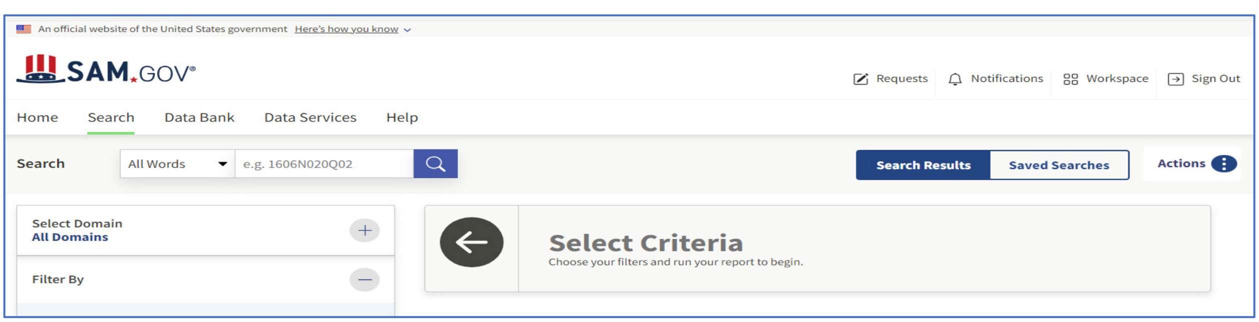
Navigate to the Search option at the top left of the landing page.



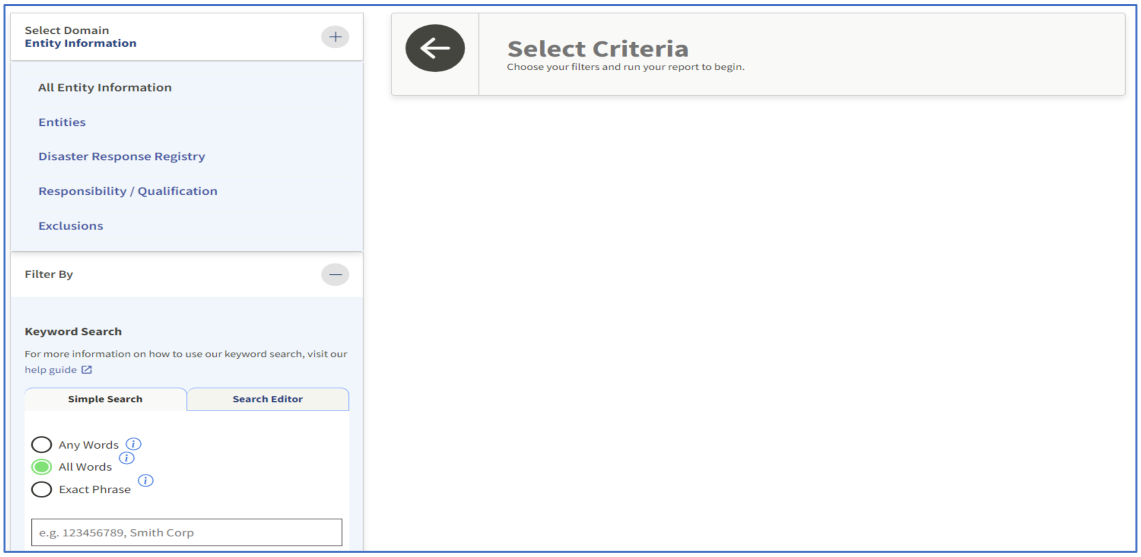
Select the search option "All Words" from the drop-down menu.



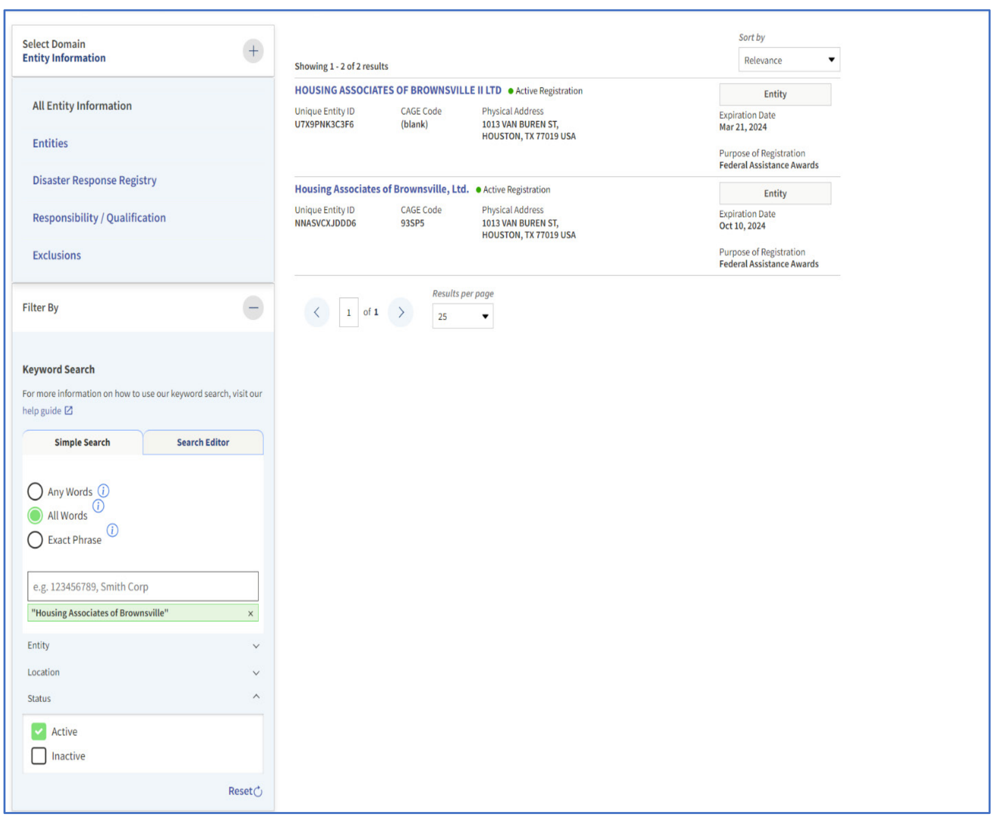
Select Domain defaults to "All Domains," but you should change this option to choose "Entity Information" by clicking on the "+" sign.



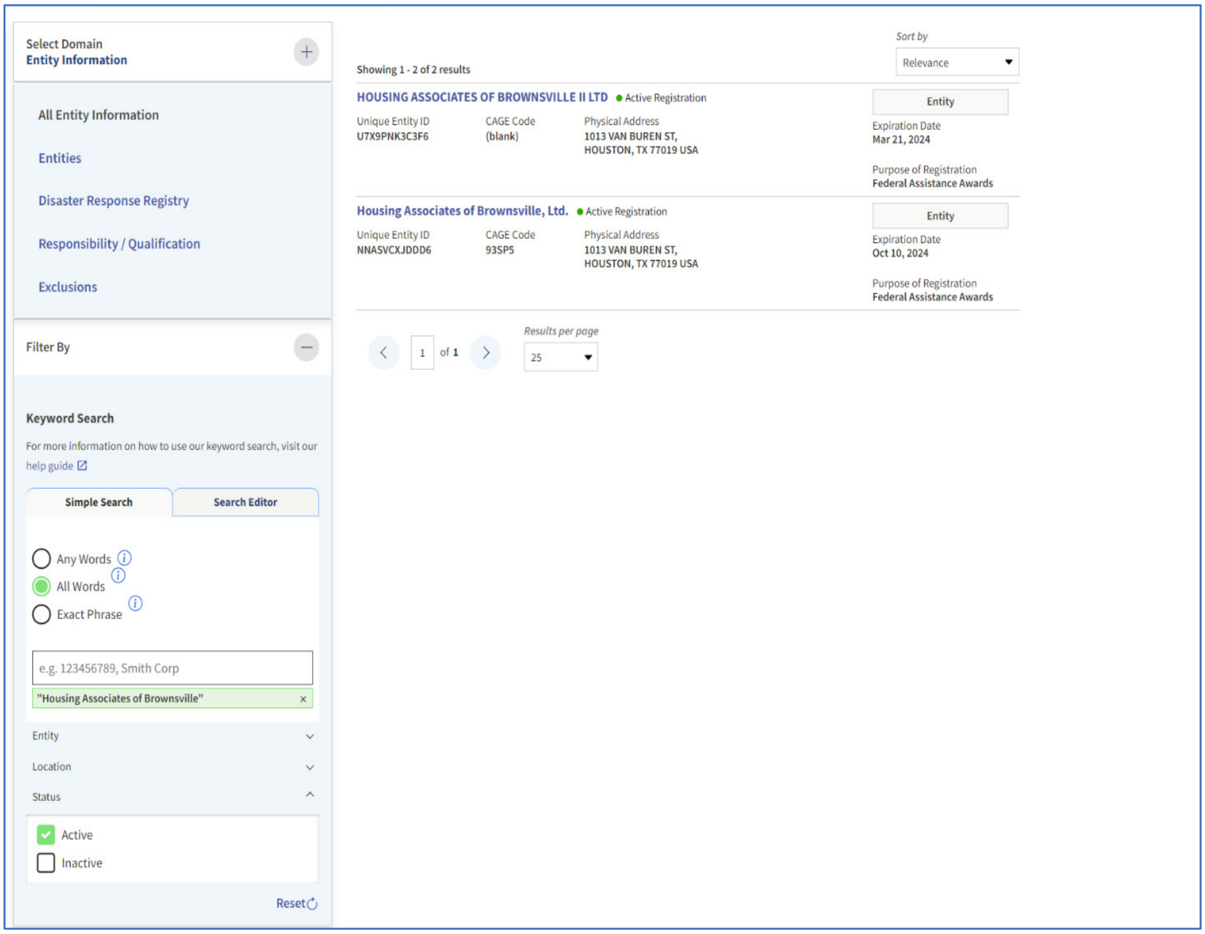
In the Keyword Search window, select the “Simple Search” tab, then choose the “All Words” option.



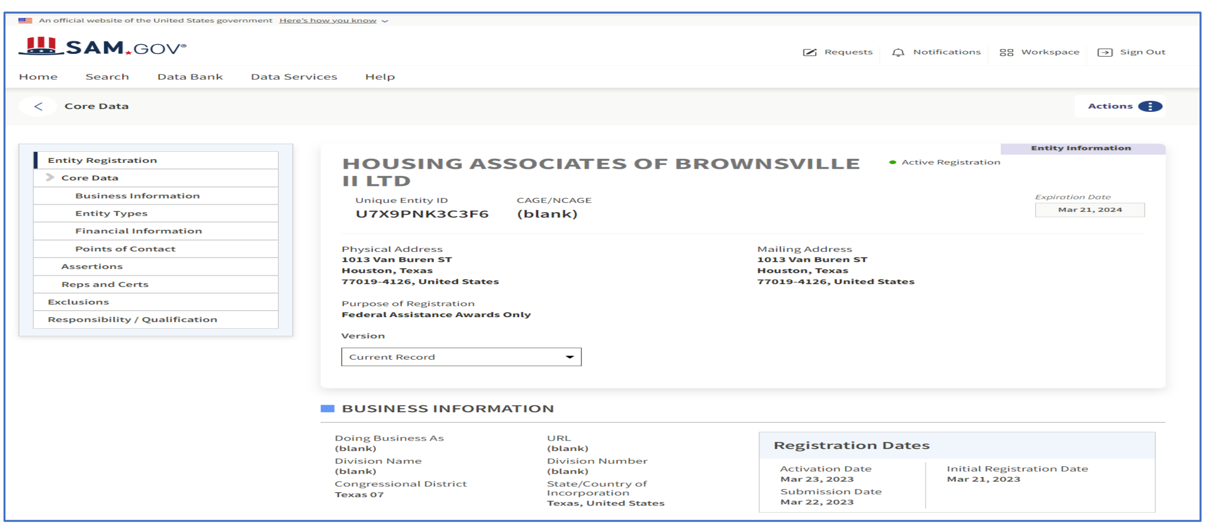
Enter the name of the vendor, or name of the individual, or the Unique Entity ID # (UEI) (if you know it), into the search box and press Enter. Note: The search criteria are very sensitive so you must be certain that you use exact spelling to include punctuation marks, etc.



Select which vendor you would like to view from the list of searches by clicking on the hyperlinked entity name in blue.

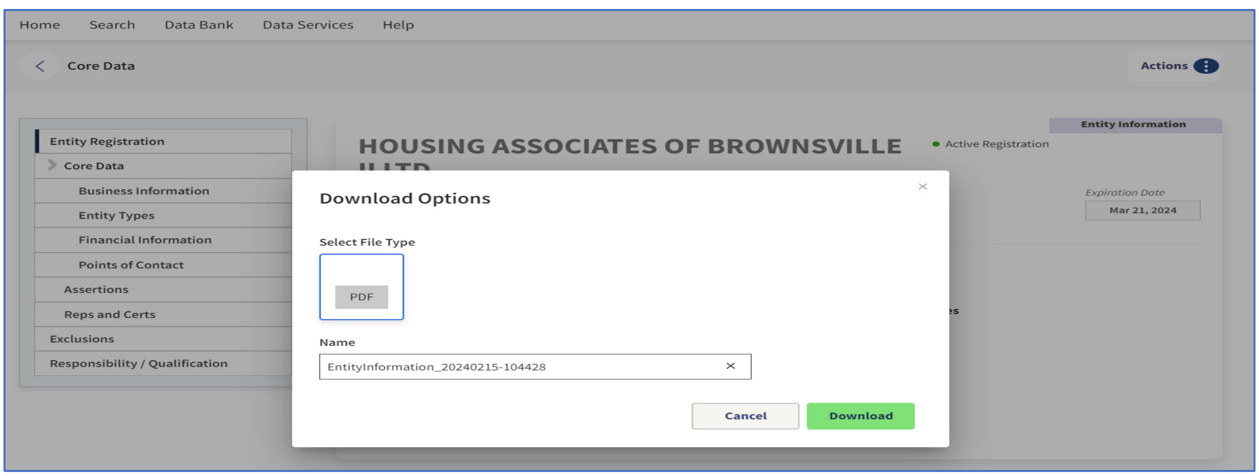


The report will look like this. Be sure to make sure that it displays “Active Registration” next to the name of the vendor and that it has not expired.



Select the 3 dots to the right attached to “Actions” to download this report.

Once the Download Options box pops up, select file type “PDF,” and then click on the green “Download” button.

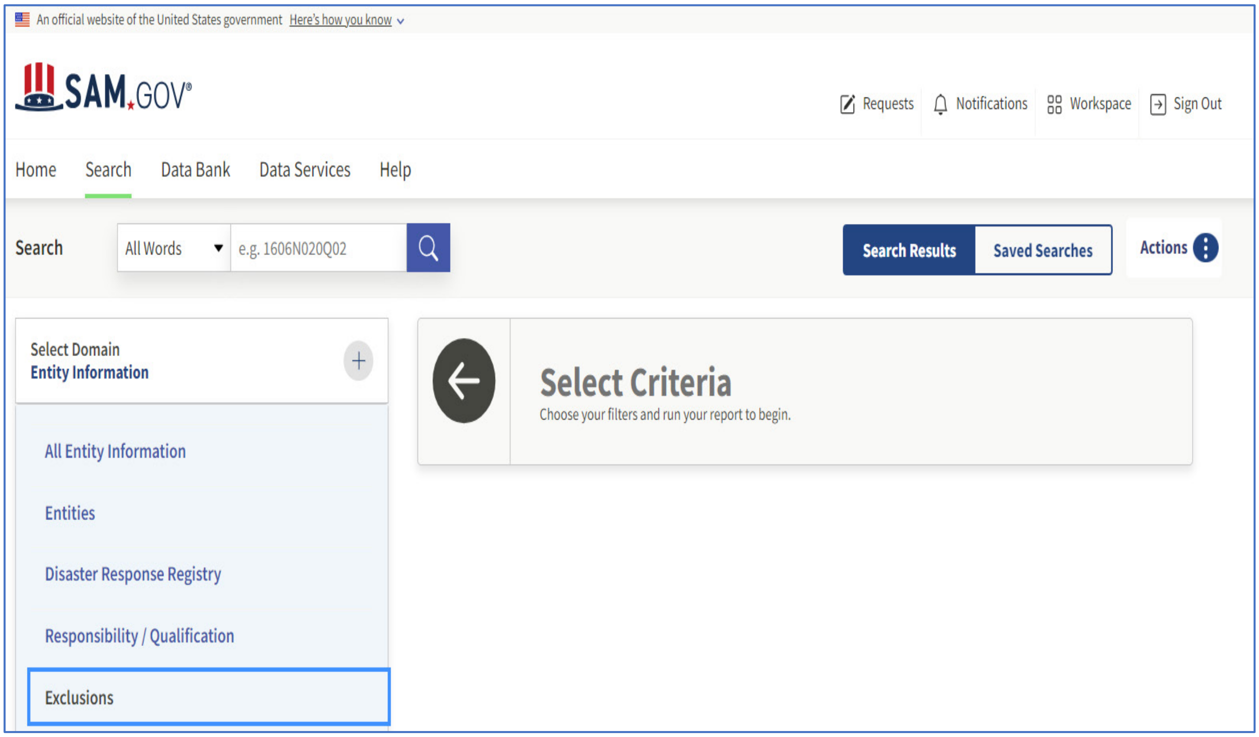


6.10 Appendix B: SAM.gov Active Exclusions

Steps to search for SAM active exclusions — Verify that the applying entity is not debarred:

Follow steps in Appendix A to log in to SAM.gov and search for an entity.

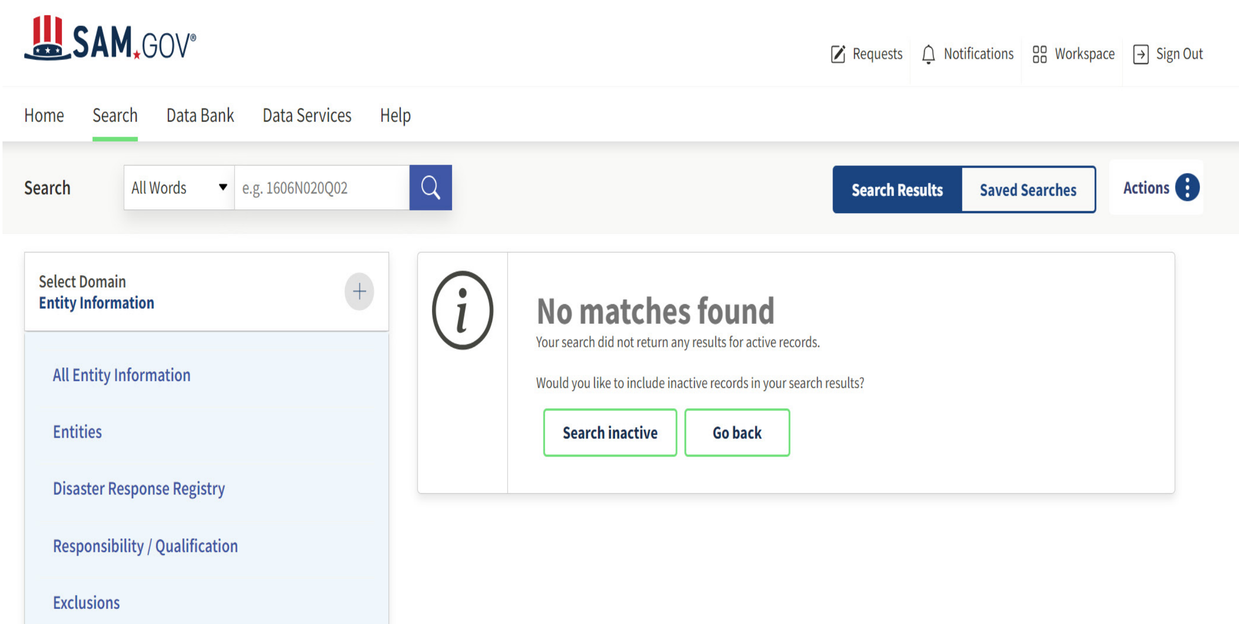
Choose “Entity Information” by clicking on the “+” sign and select “Exclusions” from the list of options shown below:



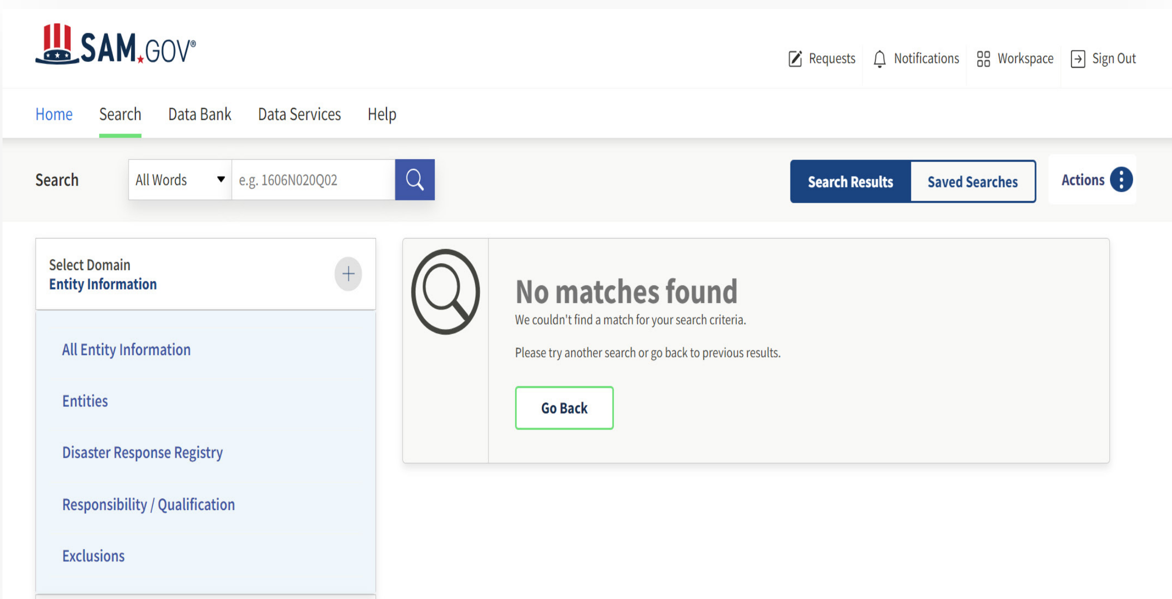
NOTE: If searching for an individual, you can search using first and last name. You can also search for the following:

- Classification
- Excluded Individual
- If you search by Social Security number, you must also enter the first and last name of the individual
- Dates
- Excluded Entity
- Federal Organizations
- Exclusion Type
- Exclusion Program
- Location

This screenshot is what you will see if the entity or individual has not been debarred in SAM.gov. Note: If you see “Search Inactive,” select the button and run a search.

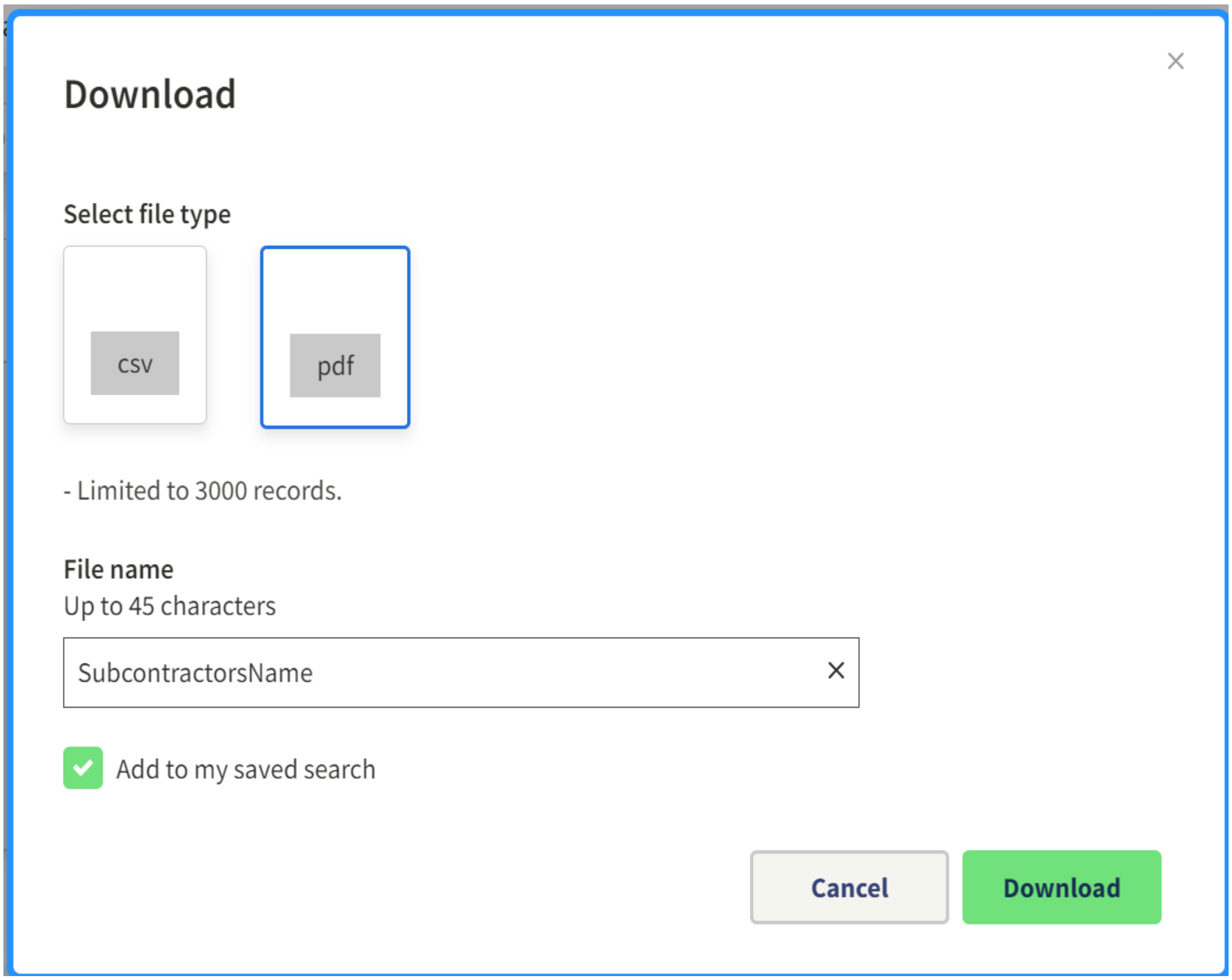


Select the 3 dots to the right of "Actions" to download this report.

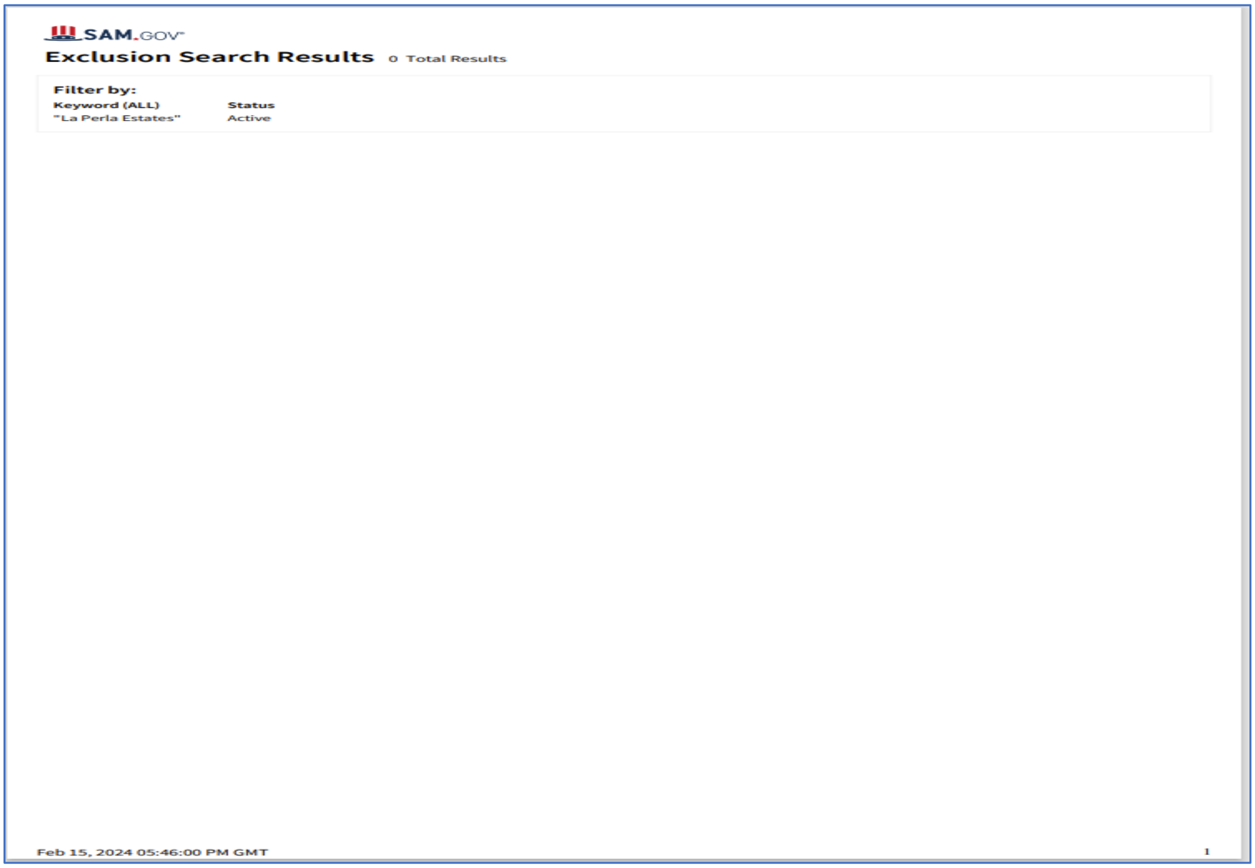


Select PDF option.

1. Name the file using the contractor or subcontractor identifier.
2. Always select "Add to my saved search."
3. Then select "Download."



Select and open the file from your downloaded documents on your computer. It will open as a PDF file and look like this.


SAM.GOV
Exclusion Search Results 0 Total Results
Filter by:
Keyword (ALL) "La Perla Estates"
Status Active
Feb 15, 2024 05:46:00 PM GMT
1

Make sure the following appear on the document:

- The document says “Exclusion Search Results”
- The name of the Entity searched
- The date the search was performed in SAM.gov
- The total number of pages for the search results