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Labor Standards Toolkit

**For a Community Development Block Grant Project**

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**Montana Department of Commerce**

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# Introduction

Please download and familiarize yourself with HUD’s publications, “Davis-Bacon and Labor Standards: Agency/Contractor Guide” and “Davis-Bacon and Labor Standards: Contractor Guide Addendum,” which clearly explain labor standards officer responsibilities.

* + “[Davis-Bacon and Labor Standards: Agency/Contractor Guide](https://files.hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Agency-and-Contractor-Guide.pdf)”
  + “[Davis-Bacon and Labor Standards: Contractor Guide Addendum](https://files.hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Contractor-Guide-Addendum.pdf)”

HUD labor standards officer trainings:

* + “[Davis-Bacon and Labor Standards Featured Trainings](https://www.hudexchange.info/programs/davis-bacon-and-labor-standards/)”

## Labor Standards Officer Responsibilities in a Nutshell

### Step 1: Name the LSO in the management plan.

When the project’s LSO is determined, please ensure that the CDBG grant specialist assigned to the project is provided with an updated management plan clearly identifying the LSO by name, with a direct email address and phone number. The management plan template is located in the “Getting Started” toolkit. The management plan is originally submitted with the CDBG application and then again, if updates are needed, to meet CDBG startup requirements.

### Step 2: Ensure that all contractors have UEI numbers via sam.gov.

After the bid opening and before the notice of award is issued to the prime contractor, the LSO must share the name, address and UEI number for the lowest responsible, responsive bidder with the project specialist so state and federal debarment can be checked. Commerce will not perform debarment checks on subcontractors because all clauses in the prime’s contract apply to the subcontractors.

### Step 3: Ensure that the applicable Davis-Bacon wage decision is being used.

In most cases, the applicable Davis-Bacon wage determination is locked in based on the advertised bid opening date, and the project specialist checks to ensure the proper determination is being used when performing the bid document review. However, if the bid opening date changes once the project is out to bid, it is the LSO’s responsibility to update the Davis-Bacon wage determination, if needed. It is the LSO’s responsibility to understand some other sets of circumstances that trigger a change in the Davis-Bacon lock-in date. See the graphic below and contact your CDBG specialist with questions.

Diagram

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### Step 4: Present labor and civil rights requirements at the preconstruction meeting.

The LSO is responsible for presenting the labor standards and civil rights requirements to the prime contractor and its subcontractors attending the preconstruction meeting. To help the LSO meet this requirement, a script is provided within this toolkit for the LSO to read at the preconstruction meeting. See “Exhibit A” for the preconstruction meeting checklist.

### Step 5: Contractor’s Receipt of Required Materials

To document that the contractor received copies of materials they are required to post in plain view of all the workers at the project site, as well as helpful information related to the applicable labor standards and civil rights requirements, the LSO must obtain the signature of the prime contractor at the preconstruction meeting on a form included in this toolkit called the contractor’s receipt of required materials. Please send a copy of the signed form with a copy of the preconstruction meeting agenda and minutes to your project specialist after the preconstruction meeting.

The contractor’s receipt of required materials form, as well as the following list of materials required to be shared with the prime contractor at the preconstruction meeting, are included in this toolkit:

* + “HUD Davis-Bacon and Labor Standards: Agency/Contractor Guide”
  + “HUD Davis-Bacon and Labor Standards: Agency/Contractor Guide Addendum”
  + Diagram on how to properly complete WH-347 certified payroll forms
  + Job site notices that must be posted in plain view for all workers at project site:
  + The applicable Davis-Bacon wage decision and additional classifications, if necessary
  + [U.S. Department of Labor Davis-Bacon poster (form WH-1321)](https://www.dol.gov/agencies/whd/posters/dbra)
  + [U.S. Department of Labor “Notice to Employees” poster](https://www.dol.gov/general/topics/posters)
  + [Equal Employment Opportunity “Know Your Rights” poster](https://www.eeoc.gov/poster)
  + [OSHA job safety and health protection poster](https://www.osha.gov/publications/poster)

### Step 6: Contractor Reporting Form

On or around the time of the preconstruction meeting, the LSO must complete the contractor reporting form included on page three of the contract and employment report form included with this toolkit for all contractors working on the project. Please remember to include the engineering firm’s contract on this list as well. If you have questions about how to complete this form, please contact the project specialist.

### Step 7: Determine whether any work classifications need to be requested.

On or around the time of the preconstruction meeting, the LSO must review the Davis-Bacon wage determination with the contractor and ensure there is a wage classification for every type of work associated with the project. Even if the Montana prevailing wage decision wages are all higher than the federal, the LSO and contractor must perform this review and request a work classification be created and added to the federal determination, if needed. Please consult with your project specialist if you think a request for a work classification is necessary.

### Step 8: Review and annotate weekly certified payrolls.

The LSO is responsible for reviewing every certified payroll form against the applicable Davis-Bacon wage determination to ensure that all laborers and mechanics are paid in compliance with HUD requirements. For specific guidance on how to perform a payroll review, please refer to the diagram provided in this toolkit. You may also consult the reviewing payrolls section of the Davis-Bacon and labor standards contractor guide addendum included in this toolkit.

As the LSO reviews the payrolls against the Davis-Bacon wage determination, please make marks demonstrating that they have been checked, and initial each page. The LSO should keep one clean, unmarked set of payrolls for the project and one marked-up set to demonstrate that they were reviewed. The marked-up set of payrolls will be submitted to Commerce when the grantee is seeking CDBG reimbursement for the associated contractor’s pay application.

The prime contractor, and all subcontractors via the prime contractor, must submit certified payroll forms to the LSO for each week of work, from the time the project begins, through completion. Weekly payrolls must be numbered sequentially and submitted by the prime to the LSO for review no later than seven days following the end of each pay period. The contractor must use the WH-347 payroll form, which is included with this toolkit, or a form containing identical information. If no work is performed on the project during a given period, the contractor may indicate “no work performed” on the form and provide the range of dates for the pay periods that no work was performed. Employers are not required to submit “no work performed” payrolls, provided that the payrolls are numbered sequentially or that the employer has provided written notice that its work on the project has been suspended.

### Step 9: Onsite Responsibilities

#### Employee Interviews

During construction, the LSO or their designee will conduct interviews with construction laborers and mechanics representing each wage classification on the project. The contractor and/or subcontractor is required to allow access to the site and workers for the purpose of completing interviews, and the interviews must be kept confidential from the contractor. The LSO must review payrolls weekly so they can be compared with information provided in the interviews. The LSO will resolve any labor standards violations promptly and maintain a detailed record of all administrative and enforcement activities with respect to labor standards.

Please use the required HUD-11 record of employee interview form and instructions included with this toolkit to ensure that the employee interviews are conducted according to HUD requirements. If the LSO designates someone to conduct the interviews, the LSO is required to review and sign off on all employee interview forms.

#### Onsite Inspections

During construction, the LSO or their designee will conduct onsite inspections to ensure that the following labor standards posters are put up in a prominent and accessible place where they may be easily seen by employees:

* + The applicable Davis-Bacon wage decision and additional classifications, if necessary
  + U.S. Department of Labor’s Davis-Bacon poster (form WH-1321)
  + U.S. Department of Labor “Notice to Employees” poster
  + Equal Employment Opportunity “Know Your Rights” poster
  + OSHA job safety and health protection poster

### Step 10: Complete and sign certification of labor compliance form with each request for reimbursement submitted with a contractor’s pay application.

As stated above, the LSO must review all certified payrolls and compare them with information collected during the employee interviews, noting discrepancies, resolving labor standards violations promptly and maintaining a detailed record of all administrative and enforcement activities with respect to labor standards.

To document labor standards compliance as the project moves through construction, the LSO will complete and sign a certification of labor compliance form that must be submitted with each request for reimbursement for construction costs associated with the project. A copy of this form is included with this toolkit. For specific guidance on labor standards documentation that must be submitted with requests for reimbursement involving contractors’ pay applications, please review our “Requests for Reimbursement” toolkit.

## Additional Considerations

### Zone Pay

**Zone rate pay or zone hourly rate**: an amount that is to be added to the base hourly rate when calculating pay, including both regular pay and overtime pay.

The HUD Denver office has confirmed that these zone rate requirements apply to the Montana State CDBG Program.

* + The published hourly wage (that is, the base hourly rate) combined with the zone hourly pay amount (that is, the zone hourly rate that is listed in the federal wage rate determination that applies to the project) becomes an employee’s base rate on which both regular pay and overtime pay are based.
  + Zone pay is not travel pay. It is additional hourly pay related to proximity to services.
  + “Zone hourly rate” is the terminology used in the federal Davis-Bacon wage rate determination documents for Montana, which can be found at the following website: [origin.www.gpo.gov/davisbacon/mt.html](http://origin.www.gpo.gov/davisbacon/mt.html).
  + Zone rate pay is not like fringe pay, since zone rate pay is properly described as a “zone hourly rate” and, as stated above, it is an amount that is to be added to the base hourly rate when calculating pay, including when calculating both regular pay and overtime pay.

### Working Subcontractors

Contractual relationships between contractors and alleged subcontractors who perform mechanics’ work, which are formed for the purpose of evading the application of prevailing wage requirements, are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona fide nature of a self-employed subcontractor who has no other employees, the following must be checked:

* + Does the subcontractor have a registered trade name and is there a telephone listing under that name?
  + Does the subcontractor have a license?
  + Does the subcontractor have liability insurance or a subcontractor’s bond?
  + Does the subcontractor have a federal tax identification number?

Any of these criteria in conjunction with a signed contract containing HUD federal labor standards provisions from each such subcontractor should be sufficient to establish that they are a bona fide subcontractor. Such a subcontractor will submit payrolls indicating only that they are the owner, the hours worked and the classification. The phrase “self-employed owner” shall be written under the name, address and Social Security number. Non-bona fide self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged them and must be paid the prevailing wage rate for the classification of work performed.

## Contractor Reporting Requirements

The contractor is required to periodically submit several forms to the grantee’s LSO. The prime contractor is fully responsible for providing all reports required from subcontractors.

* + Each contractor and subcontractor must submit certified payroll forms (WH-347) for each week of work from the time the project begins through completion.
  + Weekly payrolls should be numbered sequentially and be submitted to the grantee no later than seven days following the end of the pay period.
  + A statement of compliance with labor standards and prevailing wage requirements must be submitted with each certified payroll form.
  + Certified payrolls must be submitted for each week that work is done on the project. Final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state, “No work performed from pay period ending (date) through (date).”
  + The first week after work on the project begins, the LSO should be supplied with the names of anyone other than an owner or officer who is authorized to sign payrolls for each contractor and subcontractor.
  + The prime contractor should supply the LSO with the names of all subcontractors working on the project prior to the preconstruction conference. Each subcontractor may then be informed of the conference. The names of any new subcontractors must be supplied immediately after they begin work on the project.
  + In accordance with Executive Order 11246, each contractor, prime and sub, engaged in work totaling $10,000 or more is required to submit a minority contract reporting form, as well as any documentation regarding affirmative action efforts, to the local grantee.

### Contractor Affirmative Action

EO 11246, as amended by EO 11375, requires nondiscrimination in employment under federally assisted contracts and requires affirmative action to ensure equality of opportunity in all aspects of employment.

The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex or national origin.

* + Disadvantaged business enterprises: EO 12432 establishes the development of disadvantaged business enterprises as a national priority.
  + The grantee should supply a list of area DBEs that the prime contractor can use for contacting such businesses.
  + In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified DBEs.

Section 3 of the Housing and Urban Development Act of 1968 provides that, to the extent feasible, opportunities for training and employment must be given to lower-income residents of CDBG assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part, by project area residents.

The grantee should inform the contractor of this requirement. The project area is defined as the county in which the project takes place.

* + HUD administrative requirements for grants, 24 CFR Part 85.36, establishes procurement standards to be followed in federal assistance programs.

Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services.

### Permissible Payroll Deductions

The following payroll deductions are allowable without requesting prior approval:

* + Any deductions paid in accordance with federal, state or local law. Examples include federal withholding of income tax, state withholding taxes and federal Social Security taxes.
  + Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when the prepayment is made without discount or interest. An example of a bona fide prepayment of wages is when cash or its equivalent has been advanced to the person employed in such manner as to give them complete freedom of disposition of advanced funds.
  + Any mandated deduction by a court process to be paid to another, i.e., child support payments or garnishments by order of the court, unless the deduction favors:
  + The contractor;
  + The subcontractor;
  + Any affiliated person; or
  + When collusion or collaboration exists.   
    Note: A copy of the court order should be kept on file.
  + Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, representatives of the employer or both, for providing from principal, income or both:
  + Medical or hospital care
  + Pensions or annuities on retirement
  + Death benefits
  + Compensation for injuries, illness, accidents, sickness or disability
  + Insurance for any of the foregoing
  + Unemployment benefits
  + Vacation pay
  + Savings accounts
  + Similar payments for the benefits of employees, their families and dependents so long as law does not prohibit the deduction and it is:
  + Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done; and
  + Such consent is not a condition either for the obtaining of or for the continuation of employment; or
  + Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.
  + No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person as commission, dividend or otherwise; and
  + The deductions shall serve the convenience and interest of the employees.
  + Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
  + Any deduction requested by the employee to enable them to repay loans to or to purchase shares in credit unions organized and operated in accordance with federal and state credit union statutes.
  + Any deduction voluntarily authorized by the employee for making contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
  + Any deduction voluntarily authorized by the employee for making contributions to Community Chests, United Givers Funds and similar charitable organizations.
  + Any deduction to pay regular union initiation fees and membership dues not including fines or special assessments, if a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the law has not otherwise prohibited the deductions.
  + Any deductions for not more than the reasonable cost of board, lodging or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made, the additional records required under §516.27(a) of this title will be kept.
  + Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves and hard hats, if:
  + Law does not require such equipment to be furnished by the employer; or
  + The deduction does not violate the Fair Labor Standards Act or is not prohibited by law.
  + The cost on which the deduction is based does not exceed the actual cost to the employer when:
  + The employee purchases the equipment from the employer; and
  + There is not any direct or indirect monetary return to the employer when the equipment is purchased from a third person, and the deduction is either:
  + Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
  + Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

# Exhibit A – Preconstruction Meeting Planning Guide, Checklist and Script

## Preconstruction Planning Guide

Commerce recommends the following steps when planning for a preconstruction meeting:

* + Identify and notify meeting participants of the meeting time and place.
  + Include the project specialist on all meeting invitations.
  + Prepare the meeting materials required by the CDBG Program and all other relevant documents.
  + Organize the materials into packets for each meeting participant.

### Agenda Topics

When drafting the preconstruction meeting agenda, please take the following topics into consideration for discussion:

* + Representatives of participating organizations and how they can be contacted
  + Architect/engineer roles and responsibilities
  + Grantee responsibilities
  + Contractor responsibilities
  + Contract terms, such as pay requests, change orders and required forms
  + Construction schedule
  + Subcontractor responsibilities
  + Labor standards officer responsibilities and compliance
  + Job classifications and wage determinations (See “Exhibit B” for further guidance.)
  + Compliance with federal labor standards and civil rights regulations
  + Required worksite notices
  + Signed contractor’s receipt of required program materials

## Preconstruction Checklist

The LSO is responsible for verbally presenting the labor standards and civil rights requirements to the prime contractor and its subcontractors as part of the preconstruction meeting. The prime contractor and its subcontractors should be provided the following documents for the preconstruction meeting:

* + WH-347 Davis-Bacon and related acts weekly certified payroll form
  + Instructions for completing Davis-Bacon certified payroll form
  + Statement of compliance with labor standards and prevailing wage requirements (WH-348)
  + Statement of no work performed, for weeks when no work was completed onsite
  + Letter of signature authority
  + Fringe benefit statement
  + HUD-4230A
  + Federal Davis-Bacon wage determination for the specific project
  + Montana prevailing wage rates
  + Contractor’s receipt of required program materials

## Preconstruction Meeting Script

The LSO must verbally present the applicable labor standards and civil rights requirements to the prime contractor and any subcontractors during the preconstruction meeting. To help the LSO meet this requirement, the following sample script may be read aloud at the preconstruction meeting:

1. Wage determination and employee classification

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the U.S. Secretary of Labor to all laborers and mechanics working on the project. A copy of the applicable Davis-Bacon wage determination is included in your construction contract document and must be posted at the project site in plain view of all of the workers.

Workers are covered by the Davis-Bacon Act while working at the site, transporting materials to and from the site and while manufacturing or furnishing articles, supplies or equipment onsite. Apprentices or trainees may be paid less than journeyman wages if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor or the State Apprentice Council recognized by the Department of Labor’s Employment and Training Administration.

If the prime contractor needs laborers or mechanics whose classifications do not appear on the federal wage determination, the LSO must make a request to the CDBG project specialist for an appropriate classification to be created. A copy of the report of additional classification and wage rate, form HUD-4230A and instructions, is included in Commerce’s “Labor Standards” toolkit for reference.

Employees or supervisors working at other than their assigned classifications for 20% or more of their time must be paid and shown on the payrolls for each classification or paid for all hours at the higher wage.

If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.

Claims and disputes should be reported in writing to the labor standards officer and to the assigned Commerce program specialist. Resolution of all claims and disputes must be reported to HUD, Labor Relations Office. HUD may be called upon by Commerce to investigate and settle claims and disputes or may enter of their own volition if the need arises.

Laborers and mechanics must be paid at least once per week.

1. Work hours, overtime and safety standards

The Contract Work Hours and Safety Standards Act, as amended, is applicable to all contracts awarded by local grantees in excess of $2,000 for construction projects employing mechanics or laborers. Forty hours is the standard work week. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over 40 in a work week. No worker shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to health and safety.

1. Deductions

The Copeland Anti-Kickback Act is applicable to any federally assisted contract subject to Davis-Bacon standards. Full wages earned must be paid. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, accident insurance, vacation or holiday pay and defraying costs of apprenticeship or similar programs.

1. Contractor reporting requirements

In conjunction with the previously described labor and civil rights requirements, the contractor is required to periodically submit several forms to the LSO. The prime contractor is fully responsible for providing all reports required from subcontractors.

The prime contractor, and all subcontractors via the prime contractor, must submit certified payroll forms to the LSO for each week of work, from the time the project begins, through completion. The HUD-recommended payroll form is called the WH-347. If a contractor does not use the WH-347 payroll form, the form used must contain identical information. Weekly payrolls must be numbered sequentially and must be submitted to the LSO for review no later than seven days following the end of each pay period. If no work is performed by a contractor on the project during a whole pay period, please write, “No work performed” on the payroll form and provide the range of dates that no work was performed.

Instructions on how to properly complete the WH-347 payroll form are included in Commerce’s labor standards officer toolkit. Every week, the contractor must sign the statement of compliance on the back of the payroll form. The LSO must be supplied with the names of anyone other than the contractor’s owner or authorized payroll officer who will be signing payroll forms for the prime and subcontractors by the end of the first week that work begins on the project.

The prime contractor must provide information to the LSO for every subcontract totaling $10,000 or more so the LSO can fully complete the contract reporting form submitted to Commerce on or around the time of the preconstruction conference. All subcontractors must be invited to the preconstruction conference. If new subcontractors are added to the project after the preconstruction meeting, the names must be supplied immediately to the LSO before they begin work on the project.

1. Self-employed subcontractors

Contractual relationships between the prime contractor and subcontractors formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may be basis for debarment. Where there is any doubt as to the bona fide nature of a self-employed subcontractor who has no other employees, the following must be checked:

* + Does the subcontractor have a registered trade name and is there a telephone listing associated with that name?
  + Does the subcontractor have a license?
  + Does the subcontractor have liability insurance or a subcontractor’s bond?
  + Does the subcontractor have a federal tax identification number?

Any of these criteria in conjunction with a signed contract containing the HUD federal labor standards provisions from each such subcontractor should be sufficient to establish that they are a bona fide subcontractor. Self-employed subcontractors must submit payrolls indicating that they are the owner, the hours worked and the classification. The phrase “self-employed owner” shall be written under the name, address and Social Security number. Non-bona fide self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged them and must be paid the prevailing wage rate for the classification of work performed.

1. Job site notices

The prime contractor is required to post the following notices in a manner that is conspicuous to all workers engaged in the construction project:

* + Current federal Davis-Bacon wage determination
  + U.S. Department of Labor Davis-Bacon poster (form WH-1321)
  + U.S. Department of Labor “Notice to Employees” poster
  + Equal Employment Opportunity “Know Your Rights” poster
  + OSHA job safety and health protection poster

1. Monitoring and sanctions

The grantee’s designated LSO is responsible for monitoring the construction project to assure compliance with all relevant labor and civil rights requirements in the following ways:

* + The LSO must conduct onsite inspections to ensure that required notices are posted.
  + The LSO must examine the weekly payroll forms of the prime contractor and all subcontractors.
  + The LSO must conduct interviews with construction employees of the prime and subs.

Violations of the Davis-Bacon and related acts may result in restitution of wages to employees, suspension of the project payment, contract termination and/or suspension or debarment of the contractor or subcontractor.

Violation of the Contract Work Hours and Safety Standards Act makes contractors liable for unpaid wages and for liquidated damages to the federal government in the sum of $10 per worker per day for each violation. Intentional violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than $1,000 or by imprisonment for not more than six months, or both.

Violations of the Copeland Anti-Kickback Act could be the basis for contract termination and could result in criminal prosecution by the federal government.

1. Civil rights requirements

The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against on the basis of race, color, religion, sex or national origin.

The development of disadvantaged business enterprises is a national priority.

Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services. The grantee should supply a list of area DBEs that the prime contractor can use for contacting such businesses.

In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified DBEs.

Section 3 of the Housing and Urban Development Act of 1968 provides that, to the greatest extent feasible, opportunities for training and employment must be given to lower-income residents of the project area, and that contracts for work in connection with CDBG-funded projects be awarded to businesses located in, or owned in substantial part, by project area residents. The project area is defined as the county in which the project takes place.