

REPORT OF THE PRESIDENT AND CEO

January 23, 2020

**RESOLUTION AUTHORIZING THE IMPOSITION OF DAVIS-BACON LABOR COMPLIANCE
MONITORING FEES UPON SECTION 8 HOUSING CHOICE VOUCHER PROGRAM
PROJECT-BASED VOUCHER AWARDEES**



Douglas Guthrie
President and CEO



Howard Baum
Deputy General Counsel

Purpose: The Housing Authority is required to ensure that awardees of nine (9) or more Section 8 Housing Choice Voucher (HCV) program Project-Based Vouchers (PBVs) comply with Davis-Bacon Wages and Related Acts (“Davis-Bacon”) responsibilities but it receives no administrative fees or compensation for doing so. The imposition of Davis-Bacon compliance monitoring fees upon PBV project awardees will enable the Housing Authority to meet its obligations; assist developers, contractors and their subcontractors in successfully complying with their Davis-Bacon responsibilities; and importantly, reduce intentional and unintentional wage theft.

Issues: The Housing Authority is responsible for ensuring compliance with both federal Davis-Bacon and State Prevailing Wage requirements. These responsibilities arise in connection with Public Works projects¹ including the maintenance, repair and improvement of our public housing sites and commercial facilities. These responsibilities vary with the type of project, location, and funding source but generally include those described in Exhibit “A”.

The Housing Authority employs a Labor Compliance Administrator to meet these responsibilities. She is assisted by an Administrative Analyst who is also responsible for assisting our Section 3 Compliance Administrator. These positions are budgeted for and included annually in our Central Office (“COCC”) operating budget. These duties have been assumed within the Central Office since administrative fees from the Capital Grant for public housing projects and rental revenue for the commercial properties support these activities.

Davis-Bacon compliance responsibilities also arise in connection with the Housing Authority’s award of nine (9) or more HCV PBVs to development projects². These responsibilities specifically include:

- Hosting a pre-construction meeting;
- Reviewing and auditing certified payrolls;
- Conducting site inspections and worker interviews;
- Reviewing Apprenticeship Program Certificates;

¹ California Labor Code Section 1720 et seq.; Davis-Bacon and Related Acts (29 CFR 1, 3, 5-7 et seq.).

² See 24 CFR 983.11(c)7 among other laws. While the actual number of PBVs awarded to each project varies, in all instances to date the number of PBVs awarded to a project has exceeded nine (9) with an average award of 56.

- Calculating apprentice to journeyman ratios for various trades and ensuring adherence with Apprentice Program Standards;
- Responding to developer, prime contractor and subcontractor inquiries;
- Resolving noncompliance issues;
- Responding to DOL inquiries, investigations and audits;
- Establishing DOL-approved escrow accounts where underpayments may be identified; and
- Helping ensure underpayments are remitted to workers.

Substantial staff time and effort are required to meet these additional obligations. The average project involves monitoring compliance by a prime contractor and up to 40 subcontractors over a twenty (20) month period³.

The Housing Authority has received some assistance with PBV project compliance from the City of Los Angeles' Department of Housing and Community Development ("HCID"), but this assistance has declined as HCID's funding sources for PBV projects has changed. PBV projects have historically received funding from various sources including City of Los Angeles awards of federal grants, including Community Development Block Grant ("CDBG") and HOME Investment Partnerships Program ("HOME"). In those instances, the City is required to ensure compliance with Davis-Bacon requirements and the Housing Authority and HCID have worked together to meet these obligations⁴. However, federal appropriations for those programs have declined dramatically, and HCID monitoring has shifted primarily to local funding sources, specifically Proposition HHH, which rely on State Prevailing Wage requirements. As such, HCID's federal monitoring responsibilities have declined, leaving the Housing Authority solely responsible for Davis-Bacon monitoring in many cases.

Currently, 29 PBV projects are in construction and being monitored for Davis-Bacon compliance. The Housing Authority shares monitoring responsibilities with the City on 13 of those projects. The remaining 16 are monitored for Davis-Bacon compliance solely by the Housing Authority. This number is expected to exceed 100 in the next few years due in large part to the Housing Authority's commitment to help address the homelessness crisis in Los Angeles.

By Resolution No. 9381 adopted September 29, 2017, the Board of Commissioners authorized the Housing Authority to enter into a ten (10) year MOU with both the City and County of Los Angeles for the purpose of aligning resources to help create permanent supportive housing paired with supportive services to house the homeless. Under the MOU, the Housing Authority agreed to commit up to 5,000 of its Section 8 PBVs over five (5) years for Permanent Supportive Housing Projects ("PSH") that serve extremely and very low income homeless and chronically homeless, special needs and disabled individuals, families, transition aged youth ("TAY"), seniors and veterans. These PBVs are awarded to qualifying PSH projects pursuant to PBV Notices of Funding Availability ("PBV NOFAS"). Four (4) PBV NOFAS have been conducted to date bringing the total number of

³ 18 months for project construction and 2 month's close-out.

⁴ For example, HCID has collected certified payrolls on behalf of both agencies and the Housing Authority in concert with HCID reviews those payrolls. The City's Bureau of Contract Administration (BCA) is currently responsible for monitoring projects involving 65 or more PBV units.

PBVs awarded to 3,516 in 71 PSH projects. By separate action today, the Board is being asked to make the remaining 1,484 PBVs available for PBV NOFA awards in 2020. The acceleration of our PBV awards and will culminate in the award of all 5,000 PBVs by mid-year 2020 (2.5 years earlier than required under the MOU). As a result, over 100 PSH projects will require Davis-Bacon monitoring in the next few years. Our current staffing and resources will not be able to meet these monitoring responsibilities. Moreover, the Housing Authority would like to expand its Davis-Bacon training and support in light of our compliance experiences.

Our monitoring has revealed several instances of non-compliance and wage underpayments due largely to the misunderstanding of Davis-Bacon requirements. In California, contractors working on public works projects must be familiar with State Prevailing Wage requirements which represent the lion's share of publicly funded projects. However, Davis-Bacon projects are less prevalent so contractors are often less familiar with those requirements which differ in several regards⁵. Adding to the complexity is that for projects funded with both federal and state resources, developers may have to comply with both State Prevailing Wage and Davis-Bacon requirements. In addition and importantly, many small and disadvantaged businesses including MBE/WBE and Section 3 businesses (which often perform as subcontractors) frequently lack the understanding, experience and/or resources necessary for successful compliance. Education and training are essential if we are to realize successful Davis-Bacon compliance, enable disadvantaged businesses to work on Davis-Bacon projects, and protect worker wages.

In recognition of these needs, on December 13, 2019, the Housing Authority held a Davis-Bacon Labor Compliance Workshop in conjunction with the DOL and HUD Field Office. Over fifty (50) developers, contractors and labor compliance specialists attended the workshop demonstrating significant interest in Davis-Bacon compliance. Many communicated their desire for further training and guidance. We would also like to continue offering periodic Davis-Bacon trainings and continuous support and assistance to all who are interested.

The Housing Authority is not compensated for the cost of monitoring Davis-Bacon compliance. The Housing Authority receives administrative fees for administering its Section 8 HCV program which are adjusted annually based upon federal appropriations. The fees are intended to compensate the Housing Authority for administrative activities which include managing the Section 8 waitlist, participant enrollment, annual participant re-certification, and conducting unit HQS inspections among other related activities. The administrative fees do not cover any portion of Davis-Bacon monitoring expenses.

Solutions:

In an effort to better understand our options for managing the growing demands of Davis-Bacon compliance on limited staff resources, the Housing Authority examined the feasibility of utilizing outside labor compliance services.

⁵ Pay rates, wage classifications, overtime rules, fringe benefit payment calculations, apprenticeship programs standards and required DOL approval, all differ from State Prevailing wage requirements.

In October 2019, a solicitation for labor compliance providers was prepared and posted on LABAVN for two weeks and distributed to known labor compliance firms. A total of fourteen proposals were received, an unusually robust response for an informal solicitation. Four firms with the strongest proposals were selected for telephone interviews. They were questioned regarding their understanding of Davis-Bacon requirements, experience with Davis-Bacon projects and approach to monitoring and compliance-related activities. These firms proposed either a team-approach, comprised of hourly rates for individuals such as a project manager, analyst, interviewer, and administrative support, or an activity-based approach, involving hourly rates for specific activities such site visits and payroll and document review. Exhibit "B" provides the pricing schedules from the top four firms. Also included for reference purposes is pricing received from additional firms. Below is a summary of the first year pricing schedules submitted by the top four firms:

Firm⁶	Hourly Rate Schedules
A	Hourly rates ranging from \$73 to \$210
B	Hourly rates ranging from \$45.32 to \$164.80
C	Hourly rates ranging from \$115 to \$130
D	\$60 hourly rate for all activities

During the interviews, each firm was specifically asked how they would price their labor costs for monitoring PBV projects. The universal response was that labor costs are dependent upon these factors: the number of prime and subcontractors, project construction cost, and project completion time (start of construction through close-out).

In order to align the pricing proposals, the top three firms were asked to provide a focused quote based on a model PBV project that closely approximates the typical PBV project⁷:

- \$15 million in construction costs for ground-up construction project
- 1 prime and no more than 40 subcontractors
- 18 months for project completion plus 2 months for project close-out activities
- Performing pre-construction meetings
- File set-up and project close-out
- 6 site visits for interviews (performed on a quarterly basis)
- Certified payroll and related document review

Firms were asked to assume, for purposes of the focused quote, full compliance, timely submission of required certified payroll, fringe benefit, apprenticeship and other necessary information by the prime and all subcontractors⁸, and pricing based upon a basic or minimum level of monitoring.

⁶ Firm names have not been identified as contracts have yet to be awarded.

⁷ Section 8 provided a sampling of seven (7) projects awarded PBVs since 2017. A sampling of ten PBV projects from our latest PBV NOFA awards on January 14, 2020 revealed an average construction budget of \$15.2 million.

⁸ In our experience to date, untimely, incomplete or missing submissions occur and do require some follow-up with awardees and their contractors so additional vendor fees could apply.

Based upon these assumptions, the quotes received ranged from \$56,740 to \$61,9732 per PBV project based upon approximately 425 - 450 hours of service. Firm C provided estimates at higher levels of service as well. These quotes are summarized as follows:

Firm	Project Cost	Project Hours	Activities
A	\$56,740.00	assumes approximately 425	<ul style="list-style-type: none"> • Project Setup • Attending Meetings • Project Monitoring • Site Visits • Non-Compliance Activities • Project Closeout
B	\$61,973.00	labor hours unclear	
C	\$58,905.00	450	
	\$110,905.00	850	
	\$162,905.00	1250	

In sum, staff learned that utilizing outside firms to provide PBV labor compliance and monitoring services would cost, on average, \$59,206 per project, a much greater cost than anticipated. As a result, this approach was rejected as too great a cost burden to impose on PBV project awardees⁹.

As an alternative means of securing assistance with project monitoring, staff also explored the feasibility of hiring additional staff to provide such services. Under this approach, a basic level of compliance would be met in satisfaction of HUD and DOL requirements¹⁰. The activities performed by in-house staff would mirror those of a third party vendor but would reflect a slight reduction in staff time, primarily the time devoted to payroll review in favor of more “spot checks” and investigations driven by worker interviews and suspected or determined non-compliance. Based upon this model and our experience monitoring projects, staff estimates the average number of hours required to monitor a project by in-house labor compliance staff would be 400 as follows:

Activity	Total Project Hours
Project set up; DIR registration; preconstruction meeting attendance; distribution of materials	10 hrs
Initial review of payrolls, reports and documents (first 4 weeks of project)	30 hrs
Collecting, reviewing and verifying payrolls and various reports and documents (spot check)	300 hrs
Quarterly site visits	25 hrs
Compliance activities	25 hrs
Project Closeout	10 hrs
Total Estimated Project Hours	400 hrs

⁹ Staff is still evaluating the award of labor compliance contracts to two firms to assist the Housing Authority on a case by case basis in the event of non-compliant awardees.

¹⁰ The Housing Authority is permitted to selectively monitor and audit projects under federal regulations and guidelines. The 300 hours of payroll review works-out to approximately 4 hours per week over a 78 weeks payroll submission period per project and is subject to increase as may be warranted.

Actual hours per compliance activity will vary depending upon project size, scope, duration, contractors' compliance, contractors' understanding of Davis-Bacon obligations and other factors, but in all instances will require no less than the total 400 hours estimated above.

Staffing for additional in-house labor compliance support also received considerable attention. Our Labor Compliance Administrator has broad responsibilities as described above. As such, her responsibilities exceed those required for PBV project monitoring alone and were determined an inappropriate basis for determining hourly labor costs for new hires. Similar considerations led to the same conclusion with respect to the Administrative Analyst who assist her. However, an individual was recently hired to help ensure public works contracting requirements are being met in connection with our Transformative Climate Communities ("TCC") Grant administration. Those responsibilities are similar in both skills and scope of work to those required for Davis-Bacon compliance monitoring. As such, they were determined a reasonable basis upon which to determine hourly rates. This individual's fully-burdened salary is \$106,880 annually¹¹ or \$51.38 per hour¹².

Utilizing the \$51.38 per hour rate multiplied by 400 project monitoring hours yields a labor monitoring cost of \$20,552 per project. This amount does not include any additional administrative fees or expenses associated with hiring such persons¹³ including those related to supervision or workplace accommodations. As such, the amount may in fact slightly understate the actual cost of Davis-Bacon labor compliance per project but does bear a reasonable relationship to the true cost and is significantly below that of contracted third parties.

The proposed fee of \$20,000 per project would only be charged to awardees of nine (9) or more PBVs and is directly related to reimbursing the Housing Authority for the regulatory costs associated with performing our Davis-Bacon administrative enforcement responsibilities as detailed above. The fee will be reviewed periodically and should staff determine it is insufficient to cover Davis-Bacon monitoring fees Board authority will be sought for any increase. The amount is unrelated to any value attributable to the PBVs being awarded.

The fee would be due at the time of Section 8 Agreement to Enter into Housing Assistance Payments Contract ("AHAP") execution and prior to the commencement of construction. In the event of intentional or prolonged non-compliance, the Housing Authority would consider utilizing either in-house staff or contracted labor compliance firms to compel compliance with associated costs due and payable by the PBV awardee prior to Housing Assistance Payments Contract ("HAP") execution. All such fees and costs would be subject to adjustment from time to time based upon any changes in actual costs.

11 The fully-burdened salary reflects the base salary as well as benefits package.

12 Based upon a full time equivalent (FTE) of 2080 hours per year.

13 The hiring of two persons to meet PBV project compliance workflow demands is currently contemplated.

Current Request:

To approve the imposition of a \$20,000 labor compliance monitoring fee upon each PBV NOFA awardee of nine (9) or more PBVs , and the actual total cost associated with compelling Davis-Bacon compliance upon non-compliant PBV awardees.

Vision Plan: PATHWAYS Strategy #7: Identify opportunities to reduce operating and administrative costs so that scarce resources are maximized

The Housing Authority is responsible for ensuring that awardees of nine (9) or more PBVs comply with Davis-Bacon. Davis-Bacon helps ensure workers are paid appropriate wages and benefits. The imposition of Davis-Bacon monitoring fees upon PBV project awardees represents an opportunity to reasonably and appropriately pass operating expenses on to direct beneficiaries, safeguard limited agency resources, and helps ensure the Housing Authority is able to meet these project-specific responsibilities.

PLACE Strategy #4, Action 4.1: Commit 5,000 Section 8 PBV units over five years for the production of new Permanent Supportive Housing units in cooperation with the City and County of Los Angeles

In order for the City-County-Housing Authority collaborative to successfully bring urgently needed housing for the homeless online, the Housing Authority must ensure projects timely meet their statutory and regulatory obligations. By assessing this Labor Compliance monitoring fee, the Housing Authority will have the resources and capacity to ensure developers are informed of their obligations and are assisted through project completion without unnecessary delays.

Funding: The Chief Administrative Officer confirms the following:

Source of Funds: The proposed labor compliance fee will establish a new funding source for specific activities. As such, revenue to this fund will be maintained distinctly in the Housing Authority's fund accounting system. Similarly, associated costs will be accounted for distinctly and applied to the revenue received.

Budget and Program Impact: A new fund and cost center reflecting this activity will be included in the first administrative budget modification in March 2020. Reporting of this activity will be included in quarterly budget activity reports and in the formal 2020 Midyear Budget Modification which will be presented to the Board of Commissioners in June or July 2020.

Environmental Review:

Approval of this item does not involve a "project" within the meaning of either CEQA and NEPA and therefore is exempt from either's requirements.

ATTACHMENT: Exhibit A (Labor Compliance Responsibilities)
Exhibit B (Labor Compliance Fee Schedules)
Resolution

Exhibit A

Federal Davis-Bacon and State Prevailing Wage responsibilities that arise in connection with Housing Authority Public Works projects

- Reviewing all maintenance and construction project information and ensuring that procurements include all applicable state and federal labor requirements and wages;
- Ensuring licensing determinations are identified in our procurements;
- Including applicable wage determinations in our procurements;
- Ensuring contractors and subcontractors are registered with the State Department of Industrial Relations (“DIR”);
- Registering our Public Works projects with the DIR;
- Developing Public Works training materials and forms;
- Holding Public Works workshops and preconstruction meetings;
- Monitoring projects through the collection or periodic review of certified payroll records to ensure the payment of Prevailing Wages;
- Investigating complaints and addressing any underpayment or other non-compliance issues;
- Meeting with Department of Labor (“DOL”) and U.S. Department of Housing and Urban Development (“HUD”) Auditors;
- Responding to inquiries from the DIR and DOL;
- Filing semi-annual reports with HUD; and
- Maintaining and securing annual HUD approval of Maintenance Wages.

Exhibit B

Fee Schedules

FIRM	CLASSIFICATION OR ACTIVITY	HOURLY RATE (First Year Only)
A	Principal	No Charge
	VP/OPS	\$210/Hr.
	Senior Project Manager	\$175/Hr.
	Project Manager	\$164/Hr.
	Asst. Project Manager	\$141/Hr.
	Senior Analyst	\$113/Hr.
	Analyst	\$102/Hr.
	Site Interviewer	\$96/Hr.
	Administrative Assistant	\$73/Hr.
B	Principal/Field Monitor	\$164.80/Hr.
	Lead Compliance Manager	\$82.40/Hr.
	Labor Compliance Officer	\$61.80/Hr.
	Labor Compliance Officer	\$55.62/Hr.
	Document Control/Labor Compliance Technician	\$45.32/Hr.
C	Full Project Oversight (Billed Hourly, based on Subcontractor Range)	\$130/Hr.
	Site Visits, Meetings & Travel (Billed per Hour, Plus Mileage)	\$115/Hr.
D	Pre-Construction Meeting	\$60/Hr.
	Monthly Document Review	\$60/Hr.
	Monthly Site Visits	\$60/Hr.
E *	Project Engineer	\$120/Hr.
	Labor Compliance Staff	\$75/Hr.
	Clerical	\$56/Hr.
F *	Project Manager	\$90/Hr.
	Technical Advisor	\$150/Hr.
	Labor Compliance Staff	\$65/Hr.
G *	Principal	\$134.79/Hr.
	Senior Analyst	\$112.33/Hr.
	Analyst	\$101.09/Hr.
	Support Staff	\$67.40/Hr.
H *	Labor Compliance Director	\$125/Hr.
	Senior Labor Compliance Analyst	\$95/Hr.
	Labor Compliance Analyst	\$85/Hr.
*Not deemed qualified. Provided for reference purposes only.		

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE IMPOSITION OF DAVIS-BACON LABOR COMPLIANCE MONITORING FEES UPON SECTION 8 HOUSING CHOICE VOUCHER PROGRAM PROJECT-BASED VOUCHER AWARDEES

WHEREAS, the Housing Authority is required to ensure that awardees of nine or more project-based vouchers (PBV's) comply with Davis-Bacon Wages and Related Acts ("Davis-Bacon") responsibilities but it receives no administrative fees or compensation for doing so; and

WHEREAS, imposing Davis-Bacon compliance monitoring costs upon PBV project awardees will enable the Housing Authority to meet its obligations; assist developers, contractors and their subcontractors in successfully complying with their Davis-Bacon responsibilities; and reduce intentional and unintentional wage theft; and

WHEREAS, there are presently 29 PBV projects in construction that are being monitored for Davis-Bacon compliance; and

WHEREAS, the Housing Authority anticipates the total number of PBV projects that will require monitoring for Davis-Bacon compliance will exceed 100 in the next few years due in large part to the Housing Authority's commitment to help address the homelessness crisis in Los Angeles; and

WHEREAS, the Housing Authority's monitoring of the 29 PBV projects has revealed several instances of non-compliance and wage underpayments due largely to the misunderstanding of Davis-Bacon requirements; and

WHEREAS, as detailed in the Board Report presented on January 23, 2020 in support of this resolution, the Housing Authority studied the fully-burdened hourly cost of hiring individuals to perform Davis-Bacon compliance activities on behalf of the Housing Authority, and determined such cost to be \$51.38 per hour, and the total number of hours required for project monitoring to be 400 hours, for a total labor monitoring cost of \$20,552; and

WHEREAS, as detailed in the January 23, 2020 Board Report, \$20,552 bears a fair and reasonable relationship to the true cost to the Housing Authority of monitoring these PBV projects; and

WHEREAS, the Board of Commissioners has determined that assessing a fee of \$20,000 upon awardees of nine (9) or more PBVs is reasonable, as the fee is directly related to reimbursing the Housing Authority for the regulatory costs associated with performing its Davis-Bacon administrative enforcement responsibilities and is unrelated to any value attributable to the PBVs being awarded.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners authorizes the imposition of a fee of \$20,000 for the reimbursement of the Housing Authority's costs associated with performing its Davis-Bacon administrative enforcement responsibilities, which fee will be imposed upon awardees of nine (9) or more PBVs and which sum is due and payable at the time of Section 8 Agreement to Enter into Housing Assistance Payments Contract ("AHAP") execution and prior to the commencement of construction.

BE IT FURTHER RESOLVED that in the event of intentional or prolonged non-compliance by an awardee of nine (9) or more PBVs, the President and CEO is authorized to utilize either in-house staff or contracted labor compliance firms to compel compliance and further authorizes that all associated costs shall be due and payable by the PBV awardee prior to Housing Assistance Payments Contract ("HAP") execution.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

APPROVED AS TO FORM:
JAMES JOHNSON

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES

BY: _____
GENERAL COUNSEL

BY: _____
CHAIRPERSON

DATE ADOPTED: _____

