

## Chapter 10

miscellaneous requirements. Herein we're gonna talk about contracting pricing and types, Herein we're gonna talk about contracting pricing and types, contractor responsibility, including the HUD limited denial of participation, and the GSA system for award management, which is the debarment or suspension. We're gonna talk about evaluating cost and price, We're gonna talk about evaluating cost and price, talk about protests, contract options, and labor standards and wage rates. Selecting the contract type. There are a variety of factors that will go into the contract format, and type of contract that you're gonna use. That you decide to use, actually, is a better phrase.

The competition for pricing, how that affects it, your eventual price analysis and cost analysis, eventually that will affect the contract type. The type and complexity of the work that is required, how urgent it is, because there's some contracts that are allowed under emergency conditions, the period of performance will affect it, the contractor's technical capability the contractor's technical capability and financial responsibility, the adequacy of the contractor's accounting system, the adequacy of the contractor's accounting system, the adequacy of the contractor's accounting system, how many concurrent contracts, or how many other contracts they have and you have, the extended nature of the proposed contract, subcontracting, if you allow subcontracting, we certainly do in construction, I don't in other issues. I don't allow subcontracts, 'cause I wanna deal, such as elevator services, I wanna deal with the contractor directly.

The type of contract used varies according to the degree and timing of responsibility assumed by the contractor; remember, the contractor assumes different responsibilities for different types of work that they're doing for you. And the amount and nature of profit offered for meeting or exceeding specific goals. We'll talk about profit more in a few moments. Two prohibitive contract types are cost plus a percentage, and cost plus a percentage a percentage, and cost plus a percentage of construction costs. Many of your architects will want to get a percentage of the construction cost, and first of all prohibited, but they will try to convince you that this is a good deal, because you can control the costs. Actually the opposite occurs. It is difficult to control their costs, the costs you pay them, because every change order increases their fee. Hence, philosophically, maybe they'll be motivated to give change orders to try to talk you into giving the contractor change orders so they get more fee. I'm not telling you that they're gonna do that, I'm just telling you that's the philosophical point. Regardless, you cannot do a percentage of cost contracts. However, with real estate you can, However, with real estate you can, because it's not a percentage of cost, it's a percentage of income. A real estate agent does the work for a percentage of the sale price. And when we do an RFP we compete that percentage, but remember, their motivation is to sell it for more so that they get more of a sales price, which means you get more money. which means you get more money.

So those kind of contracts are appropriate. Do you have any contracts now, or have you heard of contracts, where there's a percentage involved, rather than a fee? rather than a fee? Either a time fee or a flat fee? Nothing else? You don't have any questions about that? Just remember, percentages for construction, for architects, are not allowed. Many years ago, do any of you remember Many years ago, do any of you remember the section 202 program, faith based construction? - That sounds scary. - Okay, well let me tell you what happened. Catholic Community Services in Vegas did a grant application, I helped them with it, it was at the time I was learning to do developments and such, so I helped them with it. They got an award, and at that time HUD allowed you to negotiate with a contractor rather than bid it, if that contractor

was of the faith. It's getting worse, was of the faith that the organization represented. I kept, listen, I was young in the game, this is the 80s, and I kept saying, "Are you sure this is okay?" We'd read the regs, and it would say it, and I'd go, "Oh man, I don't know, I'm not feeling," everybody's going, "We're not feeling very good about this," but we represented the Catholic Community Services because HUD insisted that they joint partner with us on the project. So we negotiated the contract for a percentage and the contractor would get a percentage of profit guaranteed. You know what happened, Ed? That project was budgeted 10 million and cost 14.

Because the contractor had no motivation to keep costs down, in fact he had motivation to rise construction costs to go up. HUD doesn't do that anymore, I understand. I don't know, maybe it was my project. There was just no way to control the costs, they just kept going up. I mean, what do you do, how often do we terminate construction contractors? We don't, because the problems that come from terminating We don't, because the problems that come from terminating We don't, because the problems that come from terminating a construction contractor are worse than not just fighting through and getting the job done with them. You lose all your warranties when you terminate construction contractors, so we were stuck. - And it would cost you more to hire somebody else to fix their mistakes, would it not? - Oh yeah, 'cause it's all negotiated, correct. Fixed price contracts. This is by far our most desirable contract type, because they say, "this is how much I'm going to do it for." Now, let me give you an example. Construction are all fixed price, making it much more reasonable to oversee that contract.

Firm fixed fee. Yeah, 'cause we can get an architect, an expert, and they will help us with the, for the smaller agencies, at my agency we did this, 'cause I had skilled staff, former contractors on staff who were loyal to me, us, because they were getting retirement and everything. However, for small agencies we hire a contractor, and we do, we address pay requests for a percentage of the work, and you have to ensure that that percentage is done, right? Yeah; minus what do we take out of every pay request? 10% of retention or retainage; why? To hold till the end, because there's always going to be a walk through and a punch list, and the contractor, if we don't have that 10%, the contractor wants to get it so that's the carrot at the end of the stick for them. The retention. - And after, I'm sorry, - Please. - After a certain point in the contract, when they have substantial completion, - Can we drop that percentage? Yeah, it's my understanding at 90%, or something like that, HUD will allow a drop to 5%, yeah. You're gonna have to verify that, though, I can't give you chapter and verse. What's that? - Don't know. - Yeah, well, there is. - I think there is too. - It's there, but, - About going to, and everybody's gonna pivot that, but I just wondered because I have been asked that several, - Actually, I would never do it, and here's why. Yeah, I wanted to use that as motivation to the contractor, look, you're almost done, so get done and you're gonna get it all.

You're gonna get all 10%, so get done. Well I'd like my last pay, and I wanna be president. There's a lot of hopes and dreams we all have but the answer is no. We didn't do it. Now some states require 5% retention, but if it's HUD money you have to stay with the stricter 10. Some people say, "No Mike, five is stricter than 10," no it's not; the 10% is a greater amount of retention, it's stricter, stay with the 10 with HUD money. With non HUD money, well, you do state law. But with HUD money you do HUD law. Okay, okay; so it's easier contractor extration, and the contractor takes the greater risk. Now, as many, every time I do a bid or an RFP, if I, my first thing that I always do is I say, "Can I get a firm fixed fee?" Now with legal, it's time and materials, it's hourly fees with legal, except for eviction services. And then I have a series of five different things pertaining to eviction where I can get a firm fixed fee for them, but I do have some flexibility because I tell them if anything goes, anything out of the norm happens during those processes, if I order you to go to court more than once, I get a court

appearance fee from them more than once for that, well, I can negotiate that pursuant to the hourly fee. Anything that changes out of the ordinary. But I wanna get firm fixed fee; why? Because the contractor bears a greater risk for firm fixed fee and I have less risk. Yet I can be flexible. This is the most common type of contract, and it's what you wanna do as much as possible. When you buy materials, you're buying on a firm fixed fee.

Yes, yeah, 'cause they're giving you the fee, the unit price. So the contractor in a firm fixed fee, has committed, they've given you the fee, and committed to do everything. Now remember, if you forget to put something in the specifications, that's gonna require potentially, or most likely, an increase in that firm fixed fee. Some people, I get a lot of calls says, "Mike, I have three budget years, I wanna do a firm fixed fee contract now with the contractor, and make them hold the price for two years until all my funds become available," and I tell them, "That's very unrealistic." Can I put in an escalation clause into a construction contract? The answer is no. Escalation clauses using a government index are only appropriate for ongoing types of services, construction is not ongoing. Cost reimbursement contract, this is where we will pay them for some eligible incurred costs, and then typically there's going to be a fee with that. This is how I do travel with clients based on the RFP that I was awarded by a housing authority in Texas.

I come to your place and do any amount of work, for example, this is not selling my service, this is how consultants do this, and we get so much per hour, and then you're gonna reimburse us our travel costs. Our travel costs, which means we're gonna have to turn in receipts, and you're gonna typically preapprove those travel costs, so that I don't fly first class, so that I don't do what so many developers do and get a suite at the finest hotel in the region, and usually what I tell people on these kind of travel, cost reimbursement contracts, you have to do everything pursuant to the GSA rates, or the IRS rates for the area. And I'll give them the higher of the two, to give them flexibility. If you're ever dealing with developers you've gotta put these costs in. We put all of those things into our RFQ, we negotiate all the costs, then they wanted to do a draw down, and they were staying in \$400 suites and eating \$250 meals. And we said, well that's okay, but all we're gonna, and they rented a limo to get from their house to the airport, that's what they were used to, this firm, and when they turned in we approved them for a draw down at all the IRS rates, at the mileage rate, and they hit the roof. We had no idea you actually meant that, we thought you only put that in there to satisfy HUD. We said, "Okay, and you thought wrong, so, here's your reimbursement, this is what we're approving." Oh my gosh, they went crazy. You've gotta be careful of some contractors, they like to live, what we call high on the hog, out west. No, I'm in Oklahoma, you call it there too, yeah.

So you only pay eligible incurred costs. You also make sure that you put a not to exceed figure in that contract. When do we use cost reimbursements? Well when costs can't be predicted with certainty. I can tell you what my travel's gonna be, I can estimate my meals, but I'm gonna have a not to exceed figure, and then I'll spend the money. And I'm typically a cheap date. Most contractors are. Stay in hotels where breakfast is only \$3 sometimes, when I can find them, when it works, complimentary. Well, but I give a tip, so I'll reimburse them for that. Cost reimbursement, cost contract, no fee. Sometimes people will just do stuff and not charge you a fee; now that's few and far in between, and be very careful, 'cause the fees can go, the costs can go very high in those. Some of you have seen me at Oklahoma NAHRO, Louisiana Housing Council, Texas NAHRO, when I do work for them that's what I do. They reimburse me my travel, I do it because I can get in front of people. That works then. With a regular, everyday contractor, why would they do that? Why would they do something just for cost? What it costs them to do it. I'd look at, scrutinize that very carefully. Cost plus a fixed fee; okay. That's when a consultant travels and says, "I'll charge you

That's when a consultant travels and says, "I'll charge you \$130 an hour and charge you the costs." That's what most consultants will do. In definite delivery contest. This specifies specific prices for supplies or services that period of time where orders may be placed the next year, the ordering procedures that they have the next year, the ordering procedures that they have to require, but we don't know up front to require, but we don't know up front how much we're actually going to buy until we buy it. For instance, Home Depot, HD Supply, those contracts For instance, Home Depot, HD Supply, those contracts say this is how much the materials cost, and you can buy any amount you need. That is called indefinite quantity contract. That is called indefinite quantity contract. We know what the price is, we don't know the quantity until we place the orders, but they'll sell it to us for that price. Now indefinite quantity is, yes, I'm gonna buy 10 refrigerators every three months for the year. We can predict the definite quantity of what we're going to buy, and we know we're gonna buy them over a period of time. It's more likely to have an indefinite quantity contract than it is a definite quantity contract.

Although, the definite quantity is you're gonna cut the lawn, and I'm gonna reserve the right to change this, the lawn, and I'm gonna reserve the right to change this, this times a month, this many weeks during these years, these months, then we're gonna go to every other week for these months, and then for these months, December, January, February, we're gonna go to no cuts. Maybe you'll even switch over to snow removal, see what I mean? That's a definite quantity, though the quantities are subject to revision if the weather changes. Requirements contract is when you do a bid or an RFP, and you award to one vendor only. Now remember, if you make awards to multiple vendors, you have to do guaranteed minimums and maximums. To understand that, ask me for my bid with mins and maxes and I'll give it to you. For instance, I have a plumbing bid with mins and maxes in it, because I form a pool of people to draw from, and it's all per the HUD handbook, to draw from, and it's all per the HUD handbook, and I'll give you that at no charge. Time and materials contracts. And labor hour contracts. We're gonna do this for mostly for, most of our legal work is gonna be this way. You see, our audit RFP is going to be firm fixed fees for each audit year. Our fee accounting is gonna be firm fixed fee for each month, that's what's traditional, each month.

But our legal contract is we're gonna have to get fees, hourly fees for a partner, an associate, a paralegal, and then pay them for whatever task order work we give them. And remember, task order is this; they send us an email and say, "Do you need me at the board meeting tonight?" We send an email back and say, "Yes, here's the time it is, be there 30 minutes early so you and I can chat." That's a task order, it's an email. I don't use task order forms all that much, I use emails, they contain the same amount of information. We only use time and materials contracts when nothing else is suitable, but remember, for legal some people say, "Well, Mike we pay \$3,000 a month and they'll do all of our legal work." And then I do a little audit, it's called a retainer contract, and I do an audit of their books and I go, "Well, 3,000 a month is 36,000 a year, which is fine, but you paid them 97,000 last year, and they go, "Oh, there was extra work." Really? I wanna see what they did extra work for, and many times what I find out is the extra work, the retainer is almost a base fee, just to be available, and then they charge for everything else. And people don't think it through. I had, I used to do retainer, now I'm gonna tell you don't do them. I used to, and HUD came in, and they go, "Okay, 5,000 a month for everything, right?" I go, "Yup." And actually we stayed very close to it and made sure that 5,000 was all we paid. Very close, the few variations we had were for stuff that was extra and special above what they were already including in the retainer. So that was \$80,000 a year. Now, 12 times five is five, 10, 60,000 a year. However, HUD says, "Okay, now show us that you got full value for that," and I go, "What do you mean?" They go, "The recap of hours

that they give you." An attorney will work 10 minutes and they'll put it on a sheet, another 10, and at the end of every month they give you that all detailed. Well because we're on a retainer we didn't require it. Bad decision. When it was done, I had to pay back, I meaning my agency, had to pay back \$80,000. We could not prove we had received value. I'm pretty sure we did, I just had no proof. We went back and recapped everything, and all the emails, and we were very liberal with the time that we assigned, and the auditor looked at it, and says, "You can't justify 80,000?" Nope, and they go, "We want it back," we had to pay it back out of our non-federal money. No retainer contracts, please, right here. - How do you get non-federal money? - Oh, my housing authority had over 1,000 units that were owned free and clear that we were making boku bucks on. Elderly units, elderly is not expensive. We had a whole bunch of units where we would charge 250 for a studio, 300 for a one bedroom, and 350 for a two, for elderly. 'Cause we had some caregivers that would stay in and such, it was, I mean our operating expenses were low, and we had a thousand units, we were generating millions. This was stuff we owned, that we either, that we had always owned, and that we had rebuilt, and then were, just our operating expenses were not that high. You can make a lot of money when you don't have federal rules tying you down on a lot of stuff. We did no utility allowances, they paid their own utilities. Yeah, we had a lot of money in the bank, Yeah, we had a lot of money in the bank, and HUD and the OIG took a portion of it. (laughing) and HUD and the OIG took a portion of it. (laughing) Because of, honestly, some mistakes that we made. That was a mistake on my part, to not require those backups. By the way, 45 years later, lesson learned. Are you with me? Yeah, now I know. (chuckling) Oh yeah, we had a lot of that. We have tax credit, we have a number of tax credits now, we, meaning, I haven't been there of 12 years, where we've gone through the 15 year period and now we got those buildings free and clear, we got three big buildings. And the developer who ran them did a pretty darn good job taking care of them. We had to spend a few hundred thousand dollars to boom everything up to speed, but, I don't know how many, maybe 400 units that they owned free and clear, in high rise buildings, and they're generating income; yeah. Yup, generating income. This is kind of like, in a way, the RAD program, where you're, you use RAD to redo the places and bring them up to speed, but once all that's paid off, which can be 10, 12, 15 years, you're generating income. Yeah, on lower rents than the public. 'Cause those rents were half of the rents at the time in the public sector. Now they're even more than half below, so we kept them full; yeah. By the way, we could house somebody, they can come fill out an application, Friday at two, and be moving in Saturday morning. Our application was a page and a half. Do a credit check, contact their people. Bureaucracy does cost money, I'm not putting anybody down, we're all bureaucrats, but it does cost money, yeah, a lot. Okay, here's your time and materials contract. Letter contract, oh folks, listen to me. Here, look at me. Letter contracts; so I get this call from somebody at a very large housing authority one day, the executive director, and he goes, "Hey, I hear you know a lot about purchasing," I go, "I do." He goes, "You ever heard of a letter contract?" I said, "Yeah, don't do it." And he said, "Well you're five years too late." Okay, this is a letter contract. A letter contract is you can give, if you're having trouble negotiating with the contractor, do you know what I told you that I do? I don't negotiate, I do the competition, they have to go by the contract, there's no negotiation. After the question deadline. The negotiations were going poorly, and he had stakeholders, including HUD money in the project, including investors, including politicians, including residents who wanted to get back into a site, a redeveloped beautiful site, and they couldn't arrive at agreements. and they couldn't arrive at agreements. So, somebody suggested to him to do a letter contract to give them a limited notice to proceed, based on they will finish the negotiations within maybe a matter of months. Now, let me tell you the problem with a letter contract. If you allow them to start work, everyday you're tens of thousands more into the work, and every month until you're millions into the work. What motivation do they have to give up anything on a negotiation? None; so by the time he called me, construction was complete and he still did not have a construction contract.

Because the contractor had no motivation to complete the negotiation. Now, why would the contractor want to continue doing the contract work without a contract? First of all, he's getting paid, and you're stuck, and you gotta keep paying him, 'cause you gave him a limited notice to proceed and you never withdrew it. Why didn't he withdraw it? Because he was too far in. He would have wasted all of that money. Why would the contractor want that? Well here's the deal. If you watch the judge shows on TV, what you will see is Judge Judy and Judge Mathis, and Judge Marilyn the People's Court will sometimes look at a contract and say, "Oh, I'm not gonna allow you " to, I am not going to enforce that inappropriate clause you had in the contract." You see, a judge can overrule contract clauses if they have a basis for doing so, and the basis is it's inappropriate. So the contractor knew that if they ever went to court he wasn't starting with a contract that was in your favor, he was starting with no contract at all, which puts him in a better position to adjudicate the problems. By the way, the contractor finished the job, the ED reported we have no problems, but HUD wants to know why you don't have a contract, and I says, "Well, HUD told you to do the letter contract, so just tell them this is what happened." In fact, he should have kept HUD aware every step of the way, and the investors, and he did not. But you know what? I know this housing authority, I won't say it, it's a prominent housing authority, and they've never had a problem. All warranties have been followed, they just didn't have a contract, but if they had a problem, if the contractor had gone into default, EDs, where are you in the room? He would have looked horrible. Everybody would go, "What are you doing? You started construction without a contract?" Well I did a letter contract, well the letter contract says you'll get the contract done. But there's no motivation on the part of the contractor. Okay, don't do letter contracts. No contract, no start work. There you go, got it? Yup, good, not a recommended contract type. Can result in any contract type afterwards if the contractor will agree to it. Terms should be as complete and possible, but it's limited notice to proceed. So the terms are not gonna be very complete. Letter contracts must not commit you to any amount of funding that is not available, of course not. Funding was all available though, in that example I gave you. Letter contracts are only for emergencies but my recommendation is don't do them. I've never, I've only seen them a couple of times, they never worked out well, although in both cases the contractor did fulfill all of their obligations that would have been in the contract if they'd have ever signed it. Contractor responsibility; Determination of contractor responsibility, Determination of contractor responsibility, Determination of contractor responsibility, bidder responsibility. Now, for a, for a small bid, a quote, of \$20,000, for a small bid, a quote, of \$20,000, jeez, I'm just gonna make three calls, not even three, maybe two, and say, "Would you hire them again?" However, for a big job, couple hundred thousand dollars, However, for a big job, couple hundred thousand dollars, you may wanna use this form. This form is, based on chapter 10 of the handbook, which we are now in, and it addresses all of the items which we are now in, and it addresses all of the items in these areas of the handbook. Do they have adequate resources? Did you, and it gives you lists of things that you can do. See, when I would do a million dollar award, I'd use this form, and I'd address a variety of issues. I'd use this form, and I'd address a variety of issues. Did I verify experience? Column, yes, did I request audits? Ah, I've never requested an audit. Did you verify the necessary personnel? Did you verify the necessary personnel? Yeah, I got a statement from him on who he was gonna utilize, when they were gonna be on the job, what subcontractors he's got, just seeing if everything is all organized, is things ready to go here? Does he have the capabilities? Does he have the capabilities? Yeah, I went to the yard, and his site, Yeah, I went to the yard, and his site, and took pictures, and, some of his staff were there and took pictures, and, some of his staff were there and they put their arms around each other and smiled in front of machines, and in front of the building, you know what I mean? I just took pictures to verify, yeah, I went and did a site visit. He's a guy with equipment. With warehouse, production capabilities. With warehouse, production capabilities. I checked with past jobs. Is he on, or current jobs, is he on schedule? Just write down these things. Business

ethics, wait a minute, where's that one here? Recent contracts, yes. Record of business ethics, did I contact anybody like the Better Business Bureau, the state contractors board? Yeah, made the inquiries. Yeah, made the inquiries. And then I did my due diligence. GSA (mumbling), PLS, LDP, that's an old form. Did I get the bonds? Does he have, I have copies of the license? The insurance? Once I've got all this in the file, took me about four hours, including travel time. It's a big bid. One time, I had a \$9 million bid, One time, I had a \$9 million bid, and it was all going bad, in performance. Actually, the problem was we had paid him \$9 million and only had \$7 million worth of work done. Oh I reported to the FBI, it was terrible. I went, tried to go whistleblower, they weren't interested. We went and borrowed the money and finished the job. Borrowed money using our private assets. Our non-aided assets. It was very political, extremely political. However, at one point the board is hollering, However, at one point the board is hollering, "Who did this? Who's at fault?" And I said, "In your backup, you see the form And I said, "In your backup, you see the form that I did with the pictures and everything," which good for me, took the pressure off me, put it on somebody else. CYA, cover your behind. So, but with a small job, I'm not gonna do all this, nah, So, but with a small job, I'm not gonna do all this, not gonna do it all. Frankly, since I have a commissioner here, the board was very pleased to get that backup. 'Cause that allowed them to go focus on something else, and the conclusion eventually was, sometimes contractors go bad, even though they've been great in the past, they go bad on us. It didn't make the board look any better 'cause it was in the newspapers. It didn't make staff look any better, do you know what I mean? But, our conclusion was, we got nothing else we can do These things, right here, on this list here of responsibility factors, on this list here of responsibility factors, are all on that form that I just showed you. They're all on that form. There is a website, there are two websites that we must check when we're gonna contract with a, that we must check when we're gonna contract with a, execute a contract. One of them is the HUD LDP. I have the link on my website, but if you just go to Google and put HUD, H-U-D space L-D-P, you will get it. You must check every contractor PHAs against that site. Now, I don't mean just construction contractors, I mean anybody you make an award to, for anything. You must enter in the company name, and the names of the people who own the company, who you're doing work with. And you must print those forms and put them in the file, otherwise how can you prove you checked it? Yeah; LDP is where HUD is giving a temporary restriction, a punitive restriction to a contractor for a limited amount of time. I will tell you that they don't do it for bad work, I will tell you that they don't do it for bad work, they do it for failure to honor a contract, perhaps, though I don't think that's the main one. Work deficiencies? Perhaps, but I don't think that's the main one. False certifications, most certainly, most certainly if they have falsely reported information most certainly if they have falsely reported information to the federal government, or perhaps even to a housing authority. to a housing authority. Never ever threaten a contractor that you're gonna get them debarred, or suspended. You have no such right to do that. And typically people go on these things for extremely poor work, that has cost the government money, for extremely poor work, that has cost the government money, or for committing felonies. That means if they're on the LDP they're ineligible at the time you go to do it. Oh, and if you find somebody there, and if you have verified it's not a false positive report, you have to report them to HUD. Be careful; I'll give you an example. Be careful; I'll give you an example. Today we have a lot of folks who have immigrated from the Middle East, and a lot of them are business people. Their names look very much alike, do you know what I mean? And I have generated some false positives, so before I ever would go to HUD, I would research it completely, I did research it completely myself, by having them give me an identification, a copy of a driver's license, for example, a copy of a driver's license, for example, a driver's license that, where I can compare carefully the names. Also, in these LDPs, and in the following SAM system I'm gonna tell you about, (coughing), wow, there are addresses listed, companies they worked for. In some cases while they allegedly were working for this other

company, they could prove they were already at this company, so it's obviously not the same person. You with me? Yeah, though in those cases I still sent it to HUD. And there's an office, it's on the LDP site, I forget what it is, you can find it there, but I sent it to HUD, and they verified back, this is not the same person. We get a lot of this, because the names being so similar. And sometimes they'll have five or six names, which is typical of their culture. That actually helps me because if any of them are different, there you go, yeah, it's a different person. Suspension; now we have the GSA system for SAM. This is a separate site. This is for contractors that are disqualified from receiving contract awards or from even bidding throughout the federal programs system. Sometimes it's temporary pending investigation, sometimes it's solid, already there, evidence of criminal fraud, serious misconduct. Now pull up for Samuel K Smith, or Sam K Smith, that other would come up, but it was obviously not the same person, 'cause they're two different people. Some of the sites I have even seen some of the entries have different names that they have used, also known as. That gives you actually an ability to research it. When in doubt, if you're not getting cooperation. When in doubt, if you're not getting cooperation from the contractor, send it to HUD. I have found in my career, one person on that site that was actually not a false positive, it was a positive. And happened to be somebody I knew from high school. Hazardous materials related debarment. I reported it to HUD, years ago. - He had tried to bid on a contract? - He didn't try, he did bid, and he was gonna get the award. And he was ineligible. If I recall correctly, I'm not positive, something about dumping hazardous materials into a hole in the desert. Covering it up. Yup, I turned it in. - Now, housing authority can still, if you've had particular problems with a local contractor, something like that, can housing authority build their own do not do business with his person list? - Well, yeah, but that list isn't gonna be very long so I don't know if it's really a list, or if it's just contractors you keep a record of where you've said no. But remember, I was spending \$20 million a year, typically, I was a big housing authority, and that list of people that I said no to was three or four over 32 years there. So that's not a, that's a last ditch thing that I do. Yeah, your list isn't gonna be very long, if it is, there's something wrong, somewhere. - We had a contract where the contractor defaulted. And he went, his company shut down, or went bankrupt. Well he went to work for another company that bid on our project. Since he was going to be the foreman, and he had already, his company had already defaulted, and we told them, we told the company, "Listen, you can bid this, but he cannot work on our site, and he cannot be the foreman for our job." - Okay now, stay with me. I'm not an attorney, but I can feel some problems with saying that. Because now he's working under, I'm not positive that what you said would be sustainable in a court action, so just be careful. I don't know, we could talk about it forever, and you're not trying to, but that sounds maybe not sustainable, to me. I mean, who knows why he went out of business, he might have gone out of business 'cause somebody ripped off a bunch of money and stole a bunch of equipment, and it wasn't his fault, necessarily, though he's responsible for it, who knows? But I'm not sure that that's sustainable. But if it is, here's the deal. If you guys locally are saying you're doing some, certain things, and not allowing people to bid, that's something that you're gonna have to defend yourself. And on several occasions, over 32 years there, I did it. And several occasions since then I've done it with my clients. I'm meaning I've helped them do it. But that's only after, (coughing), excuse me, that's only after the attorney, the board, the executive director, everybody's on the same page. And we're ready to defend ourselves in court if necessary, 'cause we just can't put up with this contractor any longer. Please Ed. - It sounds like the same situation you described yesterday where somebody's ex-husband wanted to pick up the plans, and you said, "We don't want that guy working on our," - That was a guy who I, who had retired from our agency, and had the one year grace period. - Similar in that someone you didn't wanna do business with? - Actually, on that one, it wasn't a matter of not wanting to do business with him, we were prohibited by law for doing business with him for one year. It is similar in a way because I had to warn that contractor, and I did warn him, in writing, that this person could not work on my



site. Could not do anything with our contract. Now, if he did things with our contract in their office, I would never know. Though I had informed him he was not allowed to. Then when he showed up to pick up the plans, that is work, and the contractor was violating that. But did I take further action on the contractor? No; I don't have time to, you know what I mean? To create issues where they're not there. And he solved it by terminating the guy. I didn't want him to terminate him, use him or other jobs, but that wasn't why he hired him, he hired him to try to influence us. So there you have it, yeah. Debarment; a contractor is fully debarred from all federal programs, this'll come off the GSA SAM system. Now remember, sometimes you will do a search on GSA SAM, you will do a search, and somebody will come up, but look at it carefully, they're not listed as being debarred, they're listed as being in the system fully compliant. So, don't just say, "Well you're listed on the system, so you can't do work," no. They have to be actually debarred. Sometimes there's a time limit on it. It's an online system, so HUD keeps up with that. You know what's one of the things here, this next here violation of contract EEO or labor law, do you know what's one of the things that, happens, to get people debarred, is labor violations, labor standard violations. Not paying people their Davis Bacon wage rates. As so happens, so often, giving them a check for their work so that it's on the certified payroll, then Saturday morning making them meet over at the parking lot, taking their check back, and giving them cash at a lower amount; oh yeah. I don't know why contractors continue to do that stuff, they always get turned in. The employees wait, keep a written record, and they'll have somebody stand off and tape it, and wait till the job is almost done and then they'll turn them in. Why do the employees do that? Well they wanna keep working, and they know they're gonna get their money. Because once they turn them in, the federal government Because once they turn them in, the federal government will go against their assets, or their bonds, or whatever else, their insurance, and cover everybody's wages. I don't know why people do that. Evaluating cost and price. Now, everything above the micro threshold we must always conduct a price analysis, and in some cases a cost analysis along with the price analysis. Price analysis compares the prices offered with the ICE, the independent cost estimate, which is done before the bid submittal deadline, or the proposal submittal deadline, and the force of competition. Now let's go to cost price analysis. Cost price analysis, per A38 of the HUD procurement handbook, page A38, are required to be done for RFPs, for construction, for similar items. Now let me go to Paducah rehab of three fire damaged units, nope, there are only two bids, so I don't wanna do that. only two bids, by the way, Paducah is mean, only two bids, by the way, Paducah is mean, and during this period, now they're getting more bids, but during this period in time we were lucky to get two. Well, I'm gonna do it with this. When, for construction RFPs, hourly fee contracts, items that are not simplistic, that are more complex in nature, and here's their price analysis. But let's go to the cost analysis portion. Now in 103D3AI of the handbook, it says that you will do the critical tests, which are, are the costs allowable, allocable, and reasonable? Now allowable means that the proposed costs are permitted by law are valid. Certainly, construction costs are permitted by law and valid, because it is much more efficient for us to hire, as I wrote here my justification, to hire an outside contractor to do this work than to try to do it in house, force account. Are they allocable? Yeah they are, because we had it in the budget. Our capital fund budget, the stuff that we got approved, that came back, it's a line item right there. So I take a copy of that and attach it here, so the auditor sees that I'm meeting the critical tests. Are the costs prudent, or reasonable? Yeah they are, because look, I did it right here. It was 10% less than my ICE. This form doesn't show it, but with construction we do the review of the schedule amounts both for the contractor and for us. And this form was not updated, because she has the updated form in her file. In A38, HUD says you must analyze profit. I use the five factors from A38 to determine profit, and I calculate it per this chart. and I calculate it per this chart. Now I'm not gonna go all through it with you, but this chart here has you justify and choose a range of profit. How many of you are aware of the analyzation of profit? Interesting; you wanna get this form on your next

construction contract. And when it's all done, I have profit analyzed and I have overhead analyzed. - What's the reason? - (chuckling) Perfect; he says, what's the reason? Why do we analyze profit and overhead on a HUD firm fixed fee bid, and I'm ready to answer that. Because HUD says we have to. Hold on; what good does it do us? Hold on; what good does it do us? Nothing; but HUD says we have to. And I do it per the HUD rules in the handbook, and it's very, actually very simple to do. And every HUD auditor, or OIG auditor that sees this said, "Excellent, you have analyzed profit and overhead." I could go into hours about when it is reasonable and when it's not, it doesn't matter, the handbook says you will do it, so therefore you will do it. And it's not impossible to do, I have a form, an OCD form, that uses processes named by HUD to arrive at the conclusion, right here. - Can you use, whenever, one of the HUD forms for construction has, they were supposed to put it preliminary, and it's supposed to have overhead, startup costs and things like that, project, for example, stuff like that, can you use the information on there, even though it's coming from the contractor and they're putting their overhead and stuff in there, can you use that as part of your justification for the numbers that use up there? - I do not. - Okay. - Because, hold on, let me finish, because that determination of profit from the contractor is not based on anything analytical. It's simply you talking to the contractor and them telling you. I base it on analytical conclusions. Right, yes, right here please. - With the form, if it shows the contract on the example's about 15%, and it's possibly 15 to 20%. - Mine will not show above 15%. - Okay, okay, back to I know HUD wants it, - Okay, okay, back to I know HUD wants it, but if you accept the bid from the contractor. - The bid is accepted based on the price analysis, comparison with the ICE, and comparison with the force of competition, and comparison with our budgeted amount. This analysis afterwards, stay with me, I like what you're doing, you're analyzing, has nothing to do with that. I am not sure what it has to do with, except that I am told that I have to do it, so I came up with an analytical document based on things things that HUD said in the handbook to utilize to do it. The critical tests are from the handbook. And by the way I understand the critical tests, that they're allowable, allocable, and reasonable, is very good, that's a good thing. The analyzation of profit and overhead, I don't even, nobody has ever been able to explain to me why we do that on firm fixed fee contracts, however, why I don't care. Let me tell you why; because mama said I'll do it, so I did it based on how they said to do it in the handbook on page A38. I'm done with that thought, any other thoughts? - If it says that it's, okay, if your analysis says, "Well they're making 50% profit," is there a pass fail to where you've gotta go back? They're still the lowest bidder. - My form will never say 50% profit. Because the maximum is 15. And one time a HUD auditor got, an Army Corps of Engineers guy, got very upset and says, "Make everything six and six, safe harbor standards," I did it, I did the analysis, and it still worked. I'm telling you, I'm all out of ammo. All of these other things, I do not know why we analyze profit for a firm fixed fee contract, except that we are ordered to do so, and I have done it. And it works. And since I've done it, all of my audits since then have been, thank you for doing that, you're in compliance with your requirements. That's all you need to do, thank you sister, the end. So if prices seem unusually high or low compared to the ICE PHME, oh yeah, now if we get into the ICE, I'm sorry, in the price analysis, and costs are all way too high, which happens in today's economy, we may go back and look at the ICE and see, was the ICE generated based on data that appears to be solid? Well it was based on RS means, it's just that in our area, it appears, and this has happened with Paducah, and in other areas, everybody's bidding high because they don't really want the work unless they can get a whole bunch of money extra. And in some cases, we've had to cancel those bids and redo it, and in one, redo the bid, with different specifications, and in one case the boss said, "We still have time with this money, let's wait and let this economy, this construction in the area calm down," and he waited for six or eight months, and we rebid it, and then the prices came in more in line with what we needed. There's things out there that we can't control, and we still have to be good stewards of public land. In fact, what he did was, now that we're talking about it, he took that money and

used it for stuff where it wouldn't be so volatile, and then used money at the other end for this new bid, 'cause he had another year kick in. Wise choice on his part, of course that came about talking with me, the architect, and the architect was right, he thought the market would settle down and even out, more firms would come into the area to meet the need, that sort of thing. Cost analysis is an evaluation of the various price elements, I showed you for construction we do the 51000 form, we talked about that, which is the schedule of values. The various elements of profit and overhead, specifically the way I have them on the chart, which is specifically as stated on page A38 of the handbook. To make sure the price is reasonable, allowable, and related to the requirements, sure. HUD requires a cost analysis for all sole source and non competitive procurements, right? Correct; when you get only one offer, but I'm doing it rather I get one offer or three. I'm still doing a cost price analysis, the whole thing. For contract modifications, correct, contract termination payments, yes, I understand. Construction contracts awarded using methods other than sealed bidding, but I do them for sealed bidding too, because it says you have to; yeah. The three critical tests; allowable, pursuant to cost principles issued by the federal government, is this an allowed expense? Allocable, meaning is related to the work and is in the budget. Is it something that's gonna advance the project? Those are, by the way, out of the cost principles area of the finance handbook. And is reasonable; reasonable costs are what a prudent business would pay, but that's always the price analysis shows that it was prudent and reasonable. If it doesn't, then you can't go forward, but it does. Oh, it does unless the prices all come in too high. Well, some people say, "What we do then "is we negotiate part of the work out to get it down to the budget." Well, that's great, expect a, yeah, I like that reaction, expect a finding if you're ever audited, because you can't negotiate construction bids, or any bid. Because they are, when you start negotiating a construction issue, or a bid, you're being unfair to the other bidders because they don't have the same right to negotiate that too. Now I've had some people say, "Well, Mike, I had three bidders and I negotiated with all three," now it's fundamentally unfair to everybody who did not bid on the project because they didn't know that you were gonna eventually negotiate. You see what I mean? You can't negotiate bids, just can't do it. Not appropriate. Conducting cost analysis other factors. Are contractor's costs likely to increase or decrease? Now, that has to do sometimes with the volatile marketplace, or how long the award period is gonna be. And this is why some people say, "Mike, I did this bid, "and I'm gonna do phase one this year, phase two next year, phase three the next," and I'll go, "Uh, uh." My analysis will show that costs are gonna be expected to rise, well I'll just do it by change order. Uh, uh; change orders have to be for unforeseen conditions. Well, but Mike, raising costs are unforeseen. That isn't the kind of unforeseen conditions they're talking about. They're talking about stuff related to the work, itself, that you could not have reasonably seen. You open the walls before rehabilitation and found copper wiring in, and then during construction you suddenly found a whole section of the building that had aluminum wiring. Remember that issue? Many years ago aluminum wiring, they used it for a while, it expands and starts fires, it took them a while to discover this. Yeah, we don't use aluminum wiring anymore. But suddenly we found out all this aluminum wiring, and it's gotta be replaced, that's unforeseen. 'Cause we did our due diligence to look at the walls, to open some, we just didn't see it, yeah. Sometimes we'll bring a technical expert in to assess the cost with construction, who is that technical expert? The architect; I share the risk by making the architect sit with, give us the 51000 form, first of all, schedule of values, our copy, and then help us analyze the two copies together. And even though I had my construction lady, Amparo, was a engineer from Colombia, and even though I had ex-contractors on site, I still had the architect help us; why? Because we're gonna make sure that we share this risk with them, and that they bring in even more knowledge into this process. By the way; that meeting is only gonna cost me a few hundred dollars from the architect because it happens over maybe two or three hours, maybe even less. So it doesn't cost me that much, yet I get the benefit of their insurance policy in the process. Yeah, effective contractor's current

practices on future costs, ah, here's one. You need to analyze that people front load documents, front load costs, give you an example. I had a housing authority, very well known, I was doing work with them, they had three phases to a project. The first and second phases they got firm fixed fees on because they knew they were gonna do the work. However, we could not predict the work for phase three, which would come about a year hence, after. So, what we did was we bid that on an hourly fee basis, it was the only way we can do the work. When the bids came in, and I had specifically warned contractors not to do this, to not give us increased phase one and phase two costs, and then give us a dollar an hour for phase three; why? Because what they're doing is they're increasing their costs up front so that if we decide not to do phase three, they still get all the money. And their preferred contractor bid \$7 an hour. And phase three was gonna be substantial, \$100,000 or more. And I said, "This is not appropriate, and we can't allow them to change their costs, so I recommend rejection of this contractor," but it was their preferred contractor, and the contractor did it knowingly because in the pre-bid I warned everybody not to. Why would the contractor do that? Knowingly, knowing I said not to do that? Tell me. - 'Cause he's already got his money, but, - No, no, no, we're not there yet. He has not got his money. The proposal was just turned in. That's a good, I never thought of that, and that's a good one, but, that wasn't the issue here. - He knows he's the preferred. - Say it again Kimberly. - He knows he's the preferred. - He knows he's the preferred, because the people have been having discussions with him, ex part, yeah, ex parte, and he knows that he's got the ins, so it doesn't matter what we say, they'll still award to him. Which is what they did, after my protest. I protested to the executive director directly, recapped everything, and I quit. I'm out of here. By the way, I did follow up on the project, that contractor did all three phases adequately, the overall price was great, no harm no foul, except it could have gone south, because if they'd have decided not to award chapter three, phase three, they've already paid for the vast majority of it. Those fees should have come in around 125, \$130 an hour. They bid \$7.50. - Would they have gotten into trouble with the Davis Bacon, because they were paying less than the wage rates there? - No, because it's professional services. And there are no wage rates for professional services for housing authorities. There is for HUD, HUD has to pay according to the Service Contract Act, SCA, but we are exempt from that. It's on my notices issued area of my website. Okay, documentation required, with sealed bids you're certainly gonna have the bid tabulation form in the file. Sometimes, you only need the price analysis for sealed bids, but I tend to seal bids since they go more expensive, I tend to do the full cost price analysis so I don't have to argue with the auditor whether HUD, OIG, or independent auditor, I don't have to argue with them about it. And it only takes me 15 minutes to do it anyway, so I do the whole cost price analysis. But if you don't have adequate competition, one bid only, you've gotta do the full analysis. I think the emphasis there is gonna be more on the critical tests, and the analysis of the breakdown of costs, tests, and the analysis of the breakdown of costs, if we have it, for a construction project, and I'm gonna do that anyway, but I document it all on the cost price analysis form, so I do it. PHA audit of contractor's records; we have a clause that must go into every bid that says that the HUD has a right, and the public housing authority, has a right, to auditor, any records related to the bid or the ensuing contract. The review, as I said, is limited to that procurement action, we must not use it as a fishing expedition to anything else. And by the way, their attorney will make sure of that. But we must make it clear, and this must be in the bid, and in the contract, that they cannot deny us access to those records. I've never done this it's within the, it could be that we would want to review their work records to see how they built their costs, I've never done it, My own analysis of those bids proves it, My own analysis of those bids proves it, but we do have access to their work documents as to how they built their price. Protests; you must have protest procedures in every bid, formal bid, or RFP that you issue. If you get my sample it'll be right there in attachment F. They're always in attachment F there. The HUD forms, and protests occur because some, 'cause they sometimes wanna assert you did something wrong,

but my protest procedures, and yours need to be the same, need to be so detailed that they must assert, they must tell you what you did wrong. How is a violation of the RFP, the bid, or of law? Or if they're protesting contract termination, how it was a violation of the contract. how it was a violation of the contract. The HUD 5369, and 5370 forms both contain provisions pertaining to protest, but they're not detailed the way you need them, so you have to have them in detail. And I issue that as a part of every bidder RFP. You need to also. Every formal process. Yeah, and that formal process, and mine does too, designates all of this. Who receives the protest, who's gonna hear the appeal, who's gonna render the decision, the time period, I limit protests within 10 days of a variety of factors, including when they knew, or when they should have known of the issue. Remedies, if the protest is not decided in their favor, yeah, I have they can appeal to the, I handle the protest initially, they can appeal to the executive director, if the executive director withholds the protest, we don't have any other appeal beyond that, which means that if they wish they can sue. Options; contract options must be listed in the bidder RFP, and in the contract, or you cannot invoke them. They must be listed there, everybody hear me? We're gonna use options when we know we have a recurring need, when we need people to do stuff over a period of time. Prior to executing an option, a housing authority must document to the file everything pertaining to that option including that there's money available, proving that it was in the original bid, and anything else that you need to invoke and anything else that you need to invoke the option, including if you're allowing an escalation in cost, including the analysis of the index that it was based on. Look at this, please. How many years can we go for contracts? Five years, correct, except for legal. Legal is limited to three. It's in a mixed finance FAQ, where they said, It's in a mixed finance FAQ, where they said, "HUD Washington DC has determined that housing authorities "HUD Washington DC has determined that housing authorities need to redo their legal every three years." Though they said it in a mixed finance FAQ it applies to everything. I will only give contractors additional years if I like their work. If I don't like their work, I do not terminate, I simply let the contract expire. Now, in chapter 11 I'm gonna talk about this more, as to why I do this this way. Nobody gets more than a year, unless it's atypical. Ed, please. - That's, what I think motivates that thing where you got this architect that's been going on forever, it looks like you're exceeding the five years, and maybe you're not, but it looks like it. - Yes, it usually looks like it because you are. - Yes, it usually looks like it because you are. That's the typical thing. - Call that out. - But if you procure it correctly, at the end of the five years, and you receive multiple bids and they are (mumbling) whatever, - Don't focus on that too much. It is still your decision, they've made it clear as to who you're gonna hire and for how long. But it must not exceed five years. When can it exceed five years? If you've got an architect that starts a job in the end of year four, and it carries over into the the sixth year, but you have to notify HUD. I have done that on a number of, let me finish that thought, I have done that on a number of occasions and says, "We have another "six months to go on this project, "we're informing you that the architect's gonna stay on the job." 'Cause we can't change architects in the middle of the game. But don't give an award to an architect one month before the five years is up and expect that HUD's gonna be pleased that you did that, you should have already done an RFQ, and made more architects available. Now, what your point is again, Kimberly? - No, I'm just thinking in small rural areas, and again, I can make a million excuses, but you procure it correctly, you get three or four bids, or say three, if you're lucky, - Offers. - Offers; and then after the five years you go out and you do all of the procurement process again, - That is correct. - You top your list, and you enter into another, I mean, I feel like you're starting over, you can't look at it, - You are starting over. You will start over at least every five years, at a maximum. - But that's okay? - Yes it is okay, and if you, now remember fee accountants travel or they do work remotely, so you're in a small area doesn't necessarily pertain to that, except that your restricted area if they have to make visits might affect the bid, but here's the issue. You're in a rural area, and you're gonna have a limited amount of architects respond, and that HUD says, "Well, gee, you need

to look for somebody different," I already looked for somebody different, and this architect works all these rural areas. As long as you've got all that in the proof in the file, I think you're okay there. 'Cause you've reached out to additional people. - That would be a good answer, that's why the question might come up, is because you maybe wouldn't have that good of an answer. If you didn't, if that's the answer then fine. - Here's one, unfortunately I'm not gonna tell you the authority, but this director lost her job, over an unrelated matter to this issue. But when I started working with her I was remote, and I didn't look her up on the map, and she kept telling me, "Mike, I'm from a small town "in Texas, I'm from a small town in Texas, "I'm from a small town in Texas, I can't get bidders for these things." I finally was gonna do a site visit because I had to help with some things, and she had gotten into some trouble over a different matter that I was gonna help with, and I got off the plane at the airport in this big, major Texas city, and I drove to her site, and the buildings, and the homes never ended, and I entered her city. Yes, her city was 23,000, it was part of a metro area of 10 million, you know what I mean? I'm going, what are you using this thing about you come from a small city? Oh, we're small, look, 23,000, you're in the middle of this big metro area. Oh, my board doesn't want me to reach past that. You see what I mean? And I know you already said, "Yeah, that's not right," however, if you were out there, there's a place however, if you were out there, there's a place called Childers, Texas, that's way out there, and it's hard, no, in those areas like that, it's hard to get, some architects just don't wanna go out there that remote. Two hours from San Antonio? - No, six from San Antonio. - Yeah, see what I mean? So that does affect it, but it doesn't mean that you quit trying. You must redo the five years, you must re-reach out to all of those people again. And don't outreach with negative waves, Moriarty, no negative waves. Offer it to everybody. If you don't get them by the deadline, extend the deadline, start this far enough ahead where you don't run out, and outreach again, and call the folks, and make a list of, as it says in 7.3 of the handbook, the architectural area, and says, "If you're not getting them, call people and ask them why." There you go. Don't ever get caught, well I looked in your yellow pages and you have an architect right here, and they going, "Well I don't think he does HUD work." No, you call him. You call him, they'll may say, "I don't do HUD work," then you're good. Very good, right here. - My question pertains to the one, plus one, plus one, and thresholds. Say, because you have thresholds at 5,000, and 50,000, and so on. If you're gonna do a contract, and you do a two year contract, the threshold is those two years, but on a case like that, - I don't do a two year contract, but keep going. - Do I add, if I'm gonna possibly use that person for those five years, possibly, we don't know the answer yet, is my threshold the five years, am I looking at? Or the one year, and then the new, less the \$50,000, or \$10,000? - I gotta tell you something, I don't understand the question, but let me explain something and see if this covers it. We have a maximum of five years on contracts, correct? I do contracts in this manner. I do it for one year. I have a option to renew for four additional years at my discretion, not the contractor. If they do good and I wanna renew it, I renew it. If they don't, well then I better have something in place to get somebody else. See, sometimes I do that with them for a year and they're very mediocre, and I know that six months in. I might start a new bidder RFP right then. And the contractor says, can I respond? I'll go, yeah. Am I gonna award it to them? No, that's why I'm doing a new bidder RFP. They ain't gonna get it, unless of course they're still the best. Then I got really a problem. But, you put the options in the bid, But, you put the options in the bid, then you put the options in the contract, and then you can choose to invoke or award the option or not, but you better have a alternate thing available but you better have a alternate thing available for people to do work with you. I hope that helps. Options can only be used if they're originally in the bid and in the contract, correct. Cannot exceed a total of five years unless you have HUD approval. I'm not aware of any state and local laws that implore shorter terms, however I do know that legal is limited to three, not five. You're gonna have a price for what you're gonna pay, as always, with every contract. Now, you might have pricing for the extension, Now, you might have pricing for the extension,

you might have a index named you might have a index named to increase the pricing. I utilize government indexes because government indexes do not have to be analyzed or justified. Per the federal government, per HUD. Typically when the option's coming up, 90 days before, you notify the contractor if you're likely to extend, and 30 day before you do extend, and it's one piece of paper and takes about 10 minutes. If you let a contract expire, you cannot extend it. Labor standards. HUD mandates anything over \$2,000, the labor standard for construction is Davis Bacon. Anything over 2,000 for maintenance laborers, the labor standard is the maintenance wage rate decision. If a contract exceeds \$100,000, overtime work rates apply for laborers that work more than 40 hours in a week, however, typically state laws will mandate something stricter. Typically, I have found out. Davis Bacon wage rates apply to everybody. We did some force account work, and we hired temporary employees. Force account is construction, we had to pay them at least the Davis Bacon wage rate, though I will be honest with you, we couldn't hire them for that low of money. Yes, I mean, we just couldn't get them for that low. Your own employees, however, do not have to be paid Davis Bacon wage rates; why? Because they're part of a government agency. Contractors have to pay Davis Bacon wage rates. By the way, our own employees, taken into consideration, all of their fringe and everything, were also making above Davis Bacon wage rates. If you issue a solicitation and Davis Bacon wage rates, or maintenance wage rate determinations apply, you must include the wage rate in the competition, so that they're aware, and then you must include it within the contract. Labor standard department regulations require payroll reports and statements of compliance with the PHA each week. That's for Davis Bacon, not for maintenance. Maintenance we don't even do certified payrolls. No, we don't do it. Not for maintenance wage rates. And remember, in 10.10 of the handbook, there are a number of services, maintenance services that exclude, are excluded from the wage rates. Pest control is one of them. The contractor and the subs are required to pay the wage rates, as described, and how do you verify that? Not only through certified payrolls, but through onsite interviews. - Did you specify, sorry, but did you specify where the exclusions are located on the Davis Bacon? - I didn't say there was any exclusive on Davis Bacon, the exclusion is maintenance. There's two different types of, I'm glad you brought it up. Let's do this again. There are two Davis wage rates, ah, let's hit that right at the first, five minutes, for the rest of them, and then I'm gonna repeat it. Five minutes, we're gonna again, and it's okay to do it again because it's somewhat confusing sometimes. Davis Bacon applies to construction only. Construction is new construction and major rehabilitation. Maintenance applies to items that are not construction, though in certain cases the maintenance items could become construction. For instance, unit turnarounds usually is not a construction issue, however, if a unit turn around is destroyed so much that it becomes an actual rehabilitation of the unit, 'cause all the sheet rock was kicked in, then it becomes construction. It comes under the term of I cannot describe it, the difference, but I know it when I see it. And HUD says, when there's any doubt, error on the side of prudence. It's just the way it is, this is the way it is. Now, here it is, I cannot think of any time where pest control would ever be construction. It's always maintenance. However, there's a long list of stuff, 10.9 of the handbook applies to Davis Bacon, and 10.10 applies to maintenance, or maintenance wage rate decisions. 10.9 is construction, Davis Bacon, 10.10 is maintenance, maintenance wage rate decisions. So, just carefully look at what you're doing and make sure. And then remember, we do not have wage rates for professional services. I once went to a meeting in Chicago, I did five or six seminars for Chicago Housing Authority over the years, and I was coming, the deputy director came in and says, "I want you to come in a day early, let's up your flight and everything, 'cause labor standards folks are gonna come give us a lecture. And they had over 100 people in the room, and the people from the labor standards office led off and said, "Every single contract you have, no matter what it is, is Davis Bacon wage rates. Well that was absolutely false.

By the way, I told the staff to shut up. We'll work it out later. He just happens to be somebody, probably is new, who don't understand the issue. Davis Bacon only applies to construction over \$2,000. All right, so, we've talked about this Contractor is responsible for its own compliance with its folks. You're not responsible to make them do it, you're responsible to remind them and tell them when they're not doing it. And if they refuse, if they refuse to allow my people, my clients, to interview their people, I say just call the labor standards office. They'll send somebody out, they'll get those interviews going. They'll come out and interview too. You must post your labor standards and wage rates enforcement. You must post the wage rates in a public place there, close to the work site. You must conduct the on site interviews with laborers, to ensure the rates are consummate with the work performed. You must review the certified payroll reports, retain all records, and ensure worker onsite safety.