

PART 1940 - GENERAL

Subpart C - Davis-Bacon and Related Acts

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Exhibit A - Labor Standards Provisions

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PART 1940 - GENERAL

Subpart C - Davis-Bacon and Related Acts

§ 1940.101 Purpose.

This instruction provides administrative guidance regarding the requirements and procedures contained in the Davis-Bacon and Related Acts, as published in the U.S. Department of Labor (DOL) regulations (29 CFR parts 1, 3, and 5). This instruction also includes the labor standards provisions that are imposed on construction projects subject to these Acts.

§ 1940.102 Policy and scope.

(a) The Acts identified in the DOL regulations apply to all construction, repair and alteration contracts in excess of \$2,000 on projects assisted with the following type of loans or grants:

- (1) Farm Labor Housing grants in subpart D of part 1944;
- (2) Supplemental grants under the Appalachian Regional Development Act of 1965 made through the Agency;
- (3) Title V Regional commission grants managed by the Agency;
- (4) Supplemental grants under the Public Works and Economic Development Act of 1965 made through the Agency; and
- (5) Rural Rental Housing loans for new construction of projects with nine or more units assisted by the Housing and Urban Development Section 8 Housing Assistance Payments Program.

(b) The Federal Acquisition Regulation prescribes labor standards requirements for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. (Revised 04-20-05, PN 385.)

(c) These Acts are not applicable to force account work performed by the applicant, sponsor, or owner's employees. (Revised 04-20-05, PN 385.)

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Loan and Grantmaking
General

§ 1940.103 Definitions.

For purposes of this instruction the following definitions apply:

Administrator. The Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

Agency. Any of the following agencies within the Rural Development mission area of the U.S. Department of Agriculture: Rural Housing Service; Rural Business-Cooperative Service; and, Rural Utilities Service.

Apprentice.

(a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau; or

(b) A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

Contract. Any contract within the scope of this instruction which is entered into for the actual construction, prosecution, completion, or repair of a public building or public work, or building or work financed either directly by authority of or with funds of the Agency to serve the interest of the general public.

Contracting Officer. The individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the applicant, sponsor or owner.

Trainee. A person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration as meeting its standard for on-the-job training programs and which has been so certified by that Administration.

Wage determination. Includes the original decision and any subsequent decisions modifying, superseding, correcting or otherwise changing the provisions of the original decision.

§1940.104 Wage determination.

(a) Types of wage determinations.

(1) General wage determinations are published weekly in the Federal Register and are current until revised. These decisions are issued for those counties within a State where there is a high volume of construction activity.

(2) General wage determinations are also issued by DOL upon request for those counties where general or area wage decisions are not published in the Federal Register.

(3) Project wage determinations are issued by DOL on a project-by-project basis.

(b) Requesting wage determinations.

(1) Action by Community Development Manager or Rural Development Manager. At least 60 days before bid opening, the Community Development Manager (CDM) or Rural Development Manager (RDM) should notify the State Office of the anticipated dates of advertising and bid opening. If the Contracting Officer (CO) has a list of crafts that will be required to complete construction of the project, it should be forwarded to the State Office along with:

- (i) A sufficiently detailed description of the work to indicate the type of construction involved;
- (ii) Location of the proposed project; and
- (iii) Additional pertinent information.

(2) Action by State Director. If appropriate general wage decisions are not available in the Federal Register, the State Director will request a wage determination under the Davis-Bacon Act or any of its related statutes by submitting Standard Form (SF) 308, "Request for Determination and Response to Request," to: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determination, Washington, D.C. 20210. The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. The Agency should anticipate that such processing in the DOL will take at least 30 days.

- (i) Care should be exercised in completing SF-308 to assure that only those classifications which will be needed in the

performance of the work have been checked (inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient). Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. Do not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(ii) Such requests for a wage determination shall be accompanied by any pertinent wage payment information which may be available. This information need not accompany a request in areas where the wage patterns are clearly established.

(iii) Whenever the wage patterns in a particular area for a particular type of construction are well established and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of the Agency, may issue a general wage determination. The Agency request should be initiated 45 days prior to the date the wage rate information is needed. Determinations for several counties can be obtained on a single request by entering "Multiple Request" in the "County" block and then listing all the appropriate counties by name on the back of SF-308.

(c) Period of wage determinations.

(1) Project wage determinations or general wage determinations not published in the Federal Register are effective for 180 calendar days from the date of such determinations. The wage determination must be in effect the date of contract award or where there is no actual contract (i.e., Owner-builder method of construction as defined in subpart A of part 1924) the date construction starts. If such a wage determination is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and award, the Agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Agency may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to

§1940.104(c) (1) (Con.)

prevent injustice, or undue hardship, or to avoid serious impairment in the conduct of Government business.

(2) General wage determinations published in the Federal Register contain no expiration date.

(d) Modifications.

(1) All actions modifying a project wage determination received by the Agency before contract award (or the start of construction where there is no contract award) shall be applicable thereto. However, modifications received by the Agency less than 10 days before the opening of bids will not be effective if the Agency finds that there is not a reasonable time before bid opening in which to notify bidders of the modification. Documentation of the Agency's findings will be inserted in the docket and a copy shall be made available to the Administrator upon request. A modification will not continue in effect beyond the effective period of the wage determination to which it relates.

(2) Modifications to general wage determinations are published in the Federal Register. The State Director should monitor the Federal Register in order to maintain a file of the current decisions for those areas within the State Office jurisdiction.

(3) All actions modifying a general wage determination decision shall be applicable thereto. However, modifications published in the Federal Register less than 10 days before the opening of bids will not be effective if the Agency finds that there is not a reasonable time before bid opening in which to notify bidders of the modification. Documentation of the Agency's findings will be inserted in the docket and a copy shall be made available to the Administrator upon request.

§1940.105 Construction contract provisions.

(a) Information for bidders, which is a part of the contract documents, should include a statement similar to the following: "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts."

(b) Labor standards provisions (Title 29, subtitle A, part 5, section 5, paragraph (a), subparagraphs (1) through (10); and paragraph (b), subparagraphs (1) through (4) of the Code of Federal Regulations) are provided in exhibit A of this Instruction. They will be made a part of

the contract documents. Any modifications to the labor standards provisions in exhibit A of this Instruction must be approved by DOL.

§1940.106 Determination of compliance.

(a) Coordination. The Agency will consult with the Secretary of Labor and the Administrator when necessary to coordinate the administration and enforcement of the labor standards provisions in exhibit A of this Instruction.

(b) Preapplication conference. The applicant will be informed at the preapplication conference that wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and that these wages must be embodied in all construction contracts.

(c) Contract review. The State Director will assure that the contract documents contain the clauses contained in exhibit A of this Instruction.

(d) Preconstruction conference. The CO, contractor, engineer, architect and other project participants will be informed at the preconstruction conference that:

(1) Project or resident inspectors, on behalf of the CO, will be responsible for monitoring the contractor's adherence to the contract provisions including compliance with the labor standards provisions.

(2) The contract may be terminated or the contractor debarred. A breach of the labor standards provisions may be grounds for termination of the contract, and for debarment as provided in 29 CFR part 5, or subpart M of part 1940.

(3) The enforcement of labor standards provisions is the same as enforcement of other requirements of the contract and may result in penalties being imposed upon the contractor.

(4) It will not be necessary, ordinarily, to conduct employee interviews or make detailed audits of payrolls and time sheets. By reviewing progress reports, contractor payroll records, and contractor apprentice agreements, the project or resident inspector should be able to obtain sufficient information to determine whether or not the contractor is in compliance with the labor standards provisions.

§1940.106(d) (Con.)

(5) The Agency will provide the contractor with the required Davis-Bacon poster (Form WH 1321, "Notice to All Employees Working on Federal or Federally Financed Construction Projects) to display at the work site with the wage determination. Copies of the poster may be obtained from the Finance Office or by writing to DOL.

(e) During construction.

(1) No payment advance, grant, or loan of funds shall be approved by the Agency after the beginning of construction unless there is on file a certification by the contractor that the contractor and the subcontractors have complied with the Davis-Bacon and Related Acts and copies of payroll records have been provided covering the period during which the work being considered for payment was performed.

(2) The project or resident inspector, on determining that the contractor is not in compliance with the labor standards provisions, should immediately notify the CO, the architect or engineer, and the CDM or RDM. The CDM or RDM will then contact the State Director for advice and further instructions. The State Director will review the information and determine whether there has been underpayment to laborers of \$1,000 or more, or whether other labor provisions have been violated.

(3) Where the underpayment is \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful, or if the contractor has disregarded its obligations to employees and subcontractors, the Agency will furnish within 60 days after completion of its investigation, a detailed enforcement report, including its findings, recommendations, and requests for further guidance, to the Administrator.

(f) Suspension of funds.

(1) In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards provisions or upon written request of DOL, the CO shall take such action as may be necessary to cause the suspension of payment or advance of funds until such time as the violations are discontinued, or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) If there is not sufficient funds due the contractor or subcontractor to satisfy the claims for employee wages and to cover any liquidated damages, the CO shall withhold or cause to be

withheld from the contractor monies payable on account of work performed under any other Federal or Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, as may be necessary to meet the contractor or subcontractor's obligations.

(3) After consultation with the State Director and DOL, funds withheld for payment of employee wages will be:

(i) paid to the individual employees that have not been paid in accordance with the terms of the contract in such amounts as to correct the violation, when the contractor or subcontractor refuses to comply with the contract, or

(ii) released to the contractor after the contractor or subcontractor has made full restitution for all violations of the labor standards provisions.

(4) Funds withheld for payment of liquidated damages associated with Davis-Bacon and Related Act violations may be disbursed only after authorization from the National Office.

§1940.107 Semiannual reports.

(a) The CDM or RDM will complete Form RD 440-29, "Semiannual Labor Compliance Report," for projects requiring compliance with the Davis-Bacon and Related Acts, and submit it to the State Director for periods of October 1 through March 31, and April 1 through September 30. This report should also include those active contracts issued under RD Instruction 2024-A that are subject to the Davis-Bacon and Related Acts. Form RD 440-29 must reach the State Director no later than April 20 and October 20 of each calendar year.

(b) State Offices will consolidate all reports received from the County and District Offices and forward three copies to the Administrator no later than April 30 and October 31.

§1940.108 Recordkeeping.

The Agency official responsible for the project will preserve all payrolls and certifications for a period of 3 years from the date of final payment on the contract. The records shall be made available to the Secretary of Labor when requested during the 3-year period.

§1940.109 - 1940.150 [Reserved]

Attachment: Exhibit A

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LABOR STANDARDS PROVISIONS

The following clauses shall be made part of the contract documents for projects subject to the Davis-Bacon and Related Acts:

(Section a) Davis-Bacon Act (40 U.S.C. 276a - 276a-7).

(1) Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section, also, regular contributions made or costs incurred for more than a weekly period (but less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during each weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraph (4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records actually set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) This paragraph has been suspended indefinitely (58 FR 58955, Nov. 5, 1993).

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

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

(v) Additional Classifications.

(A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment

Standards Administration, U.S. Department of Labor, Washington, D.C., 20210. The Administrator, or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer within the 30-day period that additional time is necessary.

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

(2) Withholding. The Agency or Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor, the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (1)(iv) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) Payrolls.

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency if the Agency is a party to the contract, but if the Agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (3)(i) of this section. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under paragraph (3) (i) of this section and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed in the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (3) (ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3) (i) of this section available for inspection, copying, or transcription by authorized representatives of the Agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Agency may, after written notice to the contractor, sponsor, applicant, or owner, take

such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification,

fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in paragraphs (1) through (10) of this section and such other clauses as the Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section.

(7) Contract termination: debarment. A breach of the contract clauses in this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Contracting Officer, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code 18 U.S.C. 1001.

(Section b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidating damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding of unpaid wages and liquidating damages. The Agency or Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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