



City of Phoenix, Arizona
Office of the City Engineer

PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

AVIATION DEPARTMENT

**GOODYEAR AIRPORT (GYR)
TAXIWAY A REHABILITATION AND STRENGTHENING**

**PROJECT NO. AV41000075 – 1- FAA
AIP No. 3-04-0018-023-2018**

MAYOR

GREG STANTON

CITY COUNCIL

DISTRICT NO. 1 – THELDA WILLIAMS
DISTRICT NO. 2 – JIM WARING
DISTRICT NO. 3 – DEBRA STARK
DISTRICT NO. 4 – LAURA PASTOR

DISTRICT NO. 5 – DANIEL VALENZUELA
DISTRICT NO. 6 – SAL DICICCIO
DISTRICT NO. 7 – MICHAEL NOWAKOWSKI
DISTRICT NO. 8 – KATE GALLEG0

CITY MANAGEMENT

CITY MANAGER
CITY ENGINEER

ED ZUERCHER
KINI L. E. KNUDSON, PE

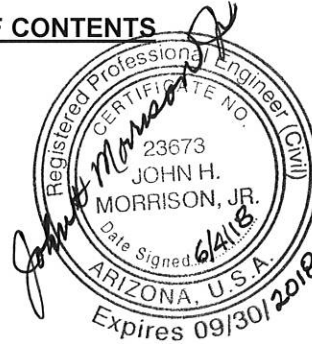


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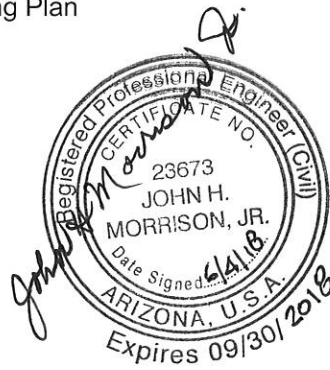
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CALL FOR BIDS

CITY OF PHOENIX GOODYEAR AIRPORT TAXIWAY A REHABILITATION & STRENGTHENING DESIGN-BID-BUILD

PROJECT NO. AV41000075 - FAA
AIP 3-04-0018-023-2018

BIDS WILL BE DUE: TUESDAY, JUNE 26, 2018 AT 2:00 P.M., PHOENIX TIME
PHOENIX CITY HALL
200 W. WASHINGTON STREET, 6th FLOOR
PHOENIX, AZ 85003-1611

The City of Phoenix is seeking a qualified construction contractor to perform the project listed below.

SCOPE OF WORK

The parallel taxiway at Goodyear Airport (GYR), Taxiway A, is an asphalt concrete taxiway for 7150 feet of its length with minimal gravel shoulders. The scope of this project is to rehabilitate and strengthen Taxiway A and construct 30-foot paved shoulders to bring Taxiway A into compliance with Taxiway Design Group (TDG) 5 standards and to accommodate the design aircraft, a Boeing 767. The southerly and northerly ends of Taxiway A are Portland Cement Concrete Pavement (PCCP) already meeting the required strength and geometry criteria for the design aircraft and TDG 5.

The Taxiway Connectors A2 and A3 will be shifted to the north on the apron side of Taxiway A, removing direct access to Runway 3/21 and thus reducing the future likelihood of runway incursions. At Taxiway Connector A2 the project consists of creating an offset in the alignment to the north by remarking and relighting the PCCP apron and by resigning the connector as Ramp 2. At Taxiway Connector A3 the offset will be created by constructing a new asphalt taxiway connector with fillets to the north of the existing taxiway connector. This new connector will be resigned as Ramp 3; the existing portion of Taxiway Connector A3 between Taxiway A and the apron will also be removed.

Scope of work also includes installing enhanced taxiway centerline markings and surface painted hold position markings to improve safety.

Major elements of work include:

- Demolition of asphalt concrete taxiway connector at apron.
- Demolition of a portion of the PCCP in Taxiway A.
- Mill and remove over 66,000 SY of taxiway asphalt, 2-inch depth.
- Construct over 35,000 SY of new taxiway shoulders.
- Place over 24,000 Tons of hot mix asphalt.
- Grading and drainage improvements including installation of pipe and structures.
- Installation of new and relocation of existing handholes, conduit runs, LED taxiway centerline lights, LED taxiway edge lights, and LED signage.
- Placement of enhanced markings to improve safety.

This is a federal-aid project. The prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, shall be the

minimum wages paid to the described classes of laborers and mechanics employed or working on the site to perform the contract.

This project will utilize federal funds and is subject to the requirements of 49 Code of Federal Regulations Part 26 and the U.S. Department of Transportation DBE Program.

The Engineer's Estimate is \$4,920,985 to \$6,014,537.

PRE-BID MEETING

A pre-bid meeting will be held on Friday, June 8, 2018, at 10:00 a.m., Phoenix time, at **Goodyear Airport Aviation Facilities Building, 1st Floor Conference Room, located at 1658 S. Litchfield Road, Goodyear, AZ 85338**. At this meeting, staff will discuss the scope of work, general contract issues and respond to questions from the attendees. As City staff will not be available to respond to individual inquiries regarding the project scope outside of this pre-bid meeting, it is strongly recommended that interested firms send a representative to the pre-bid meeting.

REQUEST FOR BID PACKET

The bid packet will be available for download on the City of Phoenix Design and Construction Procurement's "Current Opportunities" web page as of Thursday, May 31, 2018. The web address is:

<https://www.phoenix.gov/streets/procurement/current-opportunities>

Firms receiving a copy of the bid packet through any other means must download the bid packet from the City webpage and register as a plan holder for the project. The plan holder list is available for viewing within the project folder.

GENERAL INFORMATION

The City reserves the right to award the contract to the lowest responsible responsive bidder or all bids will be rejected, as soon as practicable after the date of opening bids.

The City of Phoenix will provide reasonable accommodations for alternate formats of the bid packet by calling Mr. Emeka Ekpe at (602) 273-3488 or calling TTY System (602) 256-4286. Requests will only be honored if made within the first week of the advertising period. Please allow a minimum of seven calendar days for production.

Questions pertaining to process or contract issues should be directed to Mr. Emeka Ekpe at (602) 273-3488, or email emeka.ekpe@phoenix.gov

Published: Arizona Business Gazette
Date: May 31, 2018
Date: June 7, 2018

(Out of City)

ED ZUERCHER
City Manager

Kini L.E. Knudson, PE
City Engineer

INFORMATION FOR BIDDERS

1. QUESTIONS ON PLANS AND SPECIFICATIONS

Neither the Engineer nor the City of Phoenix will be held responsible for any oral instructions. Any changes to the plans and specifications will be in the form of an addendum. All addenda will be posted online within the project folder at the following website:

<https://www.phoenix.gov/streets/procurement/current-opportunities>

A Planholder List is available within the project folder on the Design and Construction Procurement's website under "Current Opportunities". The web address is:

<https://www.phoenix.gov/streets/procurement/current-opportunities>

For additional information prior to submitting your bid, contact:

Plans, Technical/Special Provisions, Proposal or Specifications:

NAME: Mr. Emeka Ekpe, Design and Construction Procurement
ADDRESS: 200 W. Washington Street, 6th Floor, Phoenix, AZ 85003-1611
PHONE: (602) 273-3488 E-MAIL: emeka.ekpe@phoenix.gov

Federal Labor Standards/Davis-Bacon and related Acts contact:

Labor Compliance Office: (602) 261-8287

DBE Utilization contact:

Equal Opportunity Department: (602) 262-6790

All questions regarding the plans and specifications must be received (in writing) at a minimum seven calendar days prior to bid opening. Questions received after that time may not be given any consideration.

2. REQUEST FOR SUBSTITUTIONS

Paragraph A, B, and C of MAG Section 106.4 are deleted and the following paragraphs substituted:

- A. The Engineer will consider written request(s), by a prime bidder only, for substitution(s) which is/are considered equivalent to the item(s) specified in the Contract documents. The written request will be considered only if it is received at least twelve calendar days prior to the established bid date. Notification of acceptable substitutions will be made by addendum issued no fewer than seven calendar days prior to the established bid date. (A.R.S. 34-104)
- B. The prime bidder, at his own expense, will furnish the necessary data of substitution and validate that the physical, chemical, and operational qualities of each substitute item is such that this item will fulfill the originally specified required function.
- C. The substitution, if approved, will be authorized by a written addendum to the Contract documents and will be made available to all bidders. The bid date and the scheduled completion time will not be affected by any circumstances developing from this substitution.
- D. The request will be submitted to Design and Construction Procurement, Attention Mr. Emeka Ekpe, Sixth Floor, Phoenix City Hall, 200 W. Washington Street, Phoenix, Arizona 85003-1611 or via email to emeka.ekpe@phoenix.gov.

3. BID BOND

Bidders must submit a properly completed proposal guarantee, certified check, cashier's check or on the surety bond provided, for an amount not less than ten percent of the total bid amount included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal in accordance with the plans and specifications. Surety bonds submitted for this project will be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company. ***A bid will be deemed non-responsive if not accompanied by this guarantee.***

The surety bond will be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona, issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The surety bond will not be executed by an individual surety or sureties even if the requirements of Section 7-101 are satisfied. The City Clerk will return the certified check, cashiers check, or surety bond to the contractors whose proposals are not accepted, and to the successful contractor upon the execution of a satisfactory bond and contract.

When providing a Surety Bond, ***failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.***

4. **LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS & LIST OF ALL SUBCONTRACTORS AND SUPPLIERS**

A bid will be deemed non-responsive if not accompanied by a properly completed and signed "List of Major Subcontractors and Suppliers" form.

To assist in eliminating the practice of bid shopping on City construction projects, the bidder will list all Major Subcontractors and Suppliers (including DBE) to whom the bidder intends to contract with that are equal to or greater than 5% of the base bid. The list of Major Subcontractors and Suppliers will be provided on the "List of Major Subcontractors and Suppliers" form. ***Failure to properly complete and sign this form will result in bid rejection.*** This form is due with the bid.

If substantial evidence exists that bid shopping occurred on this project, the Bidder will be ineligible to bid on City construction projects for a period of one year.

The list of All Subcontractors and Suppliers will be provided on the "**List of All Subcontractors and Suppliers**" form. ***Failure to properly complete and sign this form will result in bid rejection. This form is due three calendar days after bid opening by 5:00 p.m.*** A bid will be deemed non-responsive if a properly completed and signed "**List of All Subcontractors and Suppliers**" form is not submitted.

5. **BID SUBMITTAL**

The properly completed bid documents along with the ten percent bid guarantee will be submitted in a sealed envelope. The outside of the envelope will be marked as follows:

Bid of (Firm's Name, Address, and Phone Number)
For: GYR Taxiway A Rehabilitation And Strengthening
City of Phoenix Project Number: AV41000075-1 FAA

Sealed bids will be submitted to the Design and Construction Procurement's reception desk located on the sixth floor of the Phoenix City Hall Building, 200 W. Washington, Phoenix, AZ 85003, prior to the time and date specified for bid opening.

6. **BID WITHDRAWALS**

MAG Section 102-10, Withdrawal or Revision of Proposal, is hereby deleted and the following paragraph is substituted:

"No bidder may withdraw or revise a proposal after it has been deposited with the City, except as provided in Phoenix City Code Chapter 2, Section 188. Proposals, read or unread, will not be returned to the bidders until after determination of award has been made.

7. **ADDENDA**

Acknowledge all addenda; a bid will be deemed non-responsive if all issued addenda for this project are not acknowledged in writing on Page P. -1.

The City of Phoenix will not be responsible for any oral responses or instructions made by any employees or officers of the City of Phoenix in regard to the bidding instructions, plans, drawings, specifications, or contract documents. A verbal reply to an inquiry does not constitute a modification of the Invitation for Bid (IFB). Any changes to the plans, drawings and specifications will be in the form of an addendum.

It will be the responsibility of the prospective bidder to determine, prior to the submittal of its bid, if any addenda to the project have been issued by Design and Construction Procurement. All addenda issued, will be acknowledged by bidder on Page P.-1. All addenda (if any) will be available online within each project's folder at the following website:

<https://www.phoenix.gov/streets/procurement/current-opportunities>

The contractors and/or consultants are responsible for ensuring they have all addenda and/or notifications for all projects they are submitting on. Prospective bidders are strongly encouraged to check the Design and Construction Procurement website in order to ascertain if any addenda have been issued for this project.

8. **BID SUBMITTAL CHECK LIST**

This checklist is provided to remind bidders of several of the required elements of the bid packages. It is not intended to be a comprehensive list of all of the contract documents. Bidders are encouraged to review all of the Bid Instructions to determine compliance therein.

ALL FIRMS MUST BE REGISTERED IN THE CITY'S VENDOR MANAGEMENT SYSTEM PRIOR TO SUBMITTING A PROPOSAL. FOR NEW FIRMS - THE CITY WILL SEND AN EMAIL TO YOUR FIRM WITH A VENDOR NUMBER WITHIN TWO DAYS OF SUBMITTING THE REQUEST. THE VENDOR NUMBER NEEDS TO BE INCLUDED ON THE COVER OF THE STATEMENT OF QUALIFICATIONS OR ON THE BID PROPOSAL PACKAGE/ENVELOPE. INFORMATION ON HOW TO REGISTER WITH THE CITY IS AVAILABLE AT:

<https://www.phoenix.gov/finance/vendorsreg>

- Acknowledge all addenda? (Page P. -1)
- Complete all of the Bid Proposal forms? (Page P. -1 to P. -11 and P.S. -1)
- Include your Bid Bond (rated A- or better for the prior four quarters) or Guarantee Cashier's Check? (Page S.B.-1)

- Include the Buy American Requirement Certification form, Attachment 1? (Pages F.R.– 44-46)
- Include the Certification Regarding Lobbying and Influencing Federal Employees form, Attachment 2? (Page F.R. - 47)
- Include the Rights in Data and Rights in Inventions Certification form, Attachment 3? (Page F.R. - 48)
- Include the Rights Trade Restriction Clause form, Attachment 4? (Page F.R. - 49)
- Include the Restrictions on Federal Public Works Projects Certification form, Attachment 5? (Pages F.R. – 50-51)
- Include the Certification of Non-Segregated Facilities Certification form, Attachment 7? (Page F.R. – 53)
- Include the Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters form, Attachment 8 (Page F.R. - 54)
- Documentation of Outreach Efforts form, Columns A thru D – DBE Attachment A (Page D.B.E.F. -1)
- Include the complete List of Major Subcontractors and Suppliers form? (Page L.O.S.-1)

**PLEASE DO NOT SUBMIT THE ENTIRE SPECIFICATION BOOK WHEN SUBMITTING
YOUR BID. INCLUDE ONLY THE REQUIRED BIDDING DOCUMENTS**

POST-BID SUBMITTAL CHECKLIST

All bidders wishing to remain in contention for award of the contract must submit completed contracts documents listed below. The documents must be submitted to Design and Construction Procurement, 200 W. Washington Street, 6th Floor, or can be sent by email to emeka.ekpe@phoenix.gov.

- Submit completed List of **All** Subcontractors and Suppliers form (L.O.S.-2) (3 calendar days after bid opening by 5:00 p.m.)
- Completed Documentation of Outreach Efforts form – DBE Attachment A (Page D.B.E.F. -1) (3 calendar days after bid opening by 5:00 p.m.)
- Completed Small Business Utilization Commitment form – DBE Attachment B (Page D.B.E.F. -2) (3 calendar days after bid opening by 5:00 p.m.)
- Submit Bidders Disclosure Statement? (Page B.D.S. -1 to B.D.S.- 4) (3 calendar days after bid opening by 5:00 p.m.)
- Submit Affidavit of Identity (A.O.I.-1) if you are a sole proprietor (3 calendar days after bid opening by 5:00 p.m.)

PRIOR TO CONTRACT EXECUTION

- Provide Certificate on Previous Contracts Subject to Equal Opportunity Clause form, Attachment 6 (Page F.R. – 52)

9. **PERMITS**

CITY RESPONSIBILITY – The City will be responsible for City of Phoenix review and permit(s) fees for building and demolition permits. The City will also pay review fees for grading and drainage, water, sewer, and landscaping. The City will also pay for utility design fees for permanent services. The City of Phoenix Building Safety Log Number is N/A.

CONTRACTOR RESPONSIBILITY – The Contractor will be responsible for all other permits and review fees not specifically listed above. The Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until the project is accepted. Arrangements for construction water are the Contractor's responsibility. **The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.** Copies of these permits and notices must be provided to the City's Project Manager prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit will also be provided to the Project Manager. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

10. **CONTRACT AWARD**

Contract award will be made to the responsive and responsible bidder based on the low total base bid. If unit pricing is required in the proposal, the extensions and additions will be verified to assure correctness. Award will be based on the revised total if any errors are found. Additionally, the Contractor will comply with the DBE requirements as detailed in the DBE Clause. The City expressly reserves the right to cancel this agreement without recourse or prejudice to Contractor until all parties have executed the agreement in full.

Any bidder that currently contracts with the City must be in good standing for its proposal to be considered responsive. For the purpose of this Invitation to Bid, good standing means compliance with all contractual provisions, including payment of financial obligations.

11. **CANCELLATION OF CONTRACT FOR CONFLICT OF INTEREST**

All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Phoenix pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

12. **TERMINATION FOR CONVENIENCE**

The Owner for its own convenience has the right for any reason and at any time to terminate the contract and require the Contractor to cease work hereunder. Such termination will be effective at the time and in the manner specified in the notification to the Contractor of the termination. Such termination will be without prejudice to any claims which the Owner may have against the Contractor. In the event of a termination for convenience, the Contractor will be paid only the direct value of its completed work and materials supplied as of the date of termination, and Contractor will not be entitled to anticipated profit or anticipated overhead or any other claimed damages from the Owner, Architect or the Engineer. If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

If the City is found to have improperly terminated the Contract for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Contract.

13. **SURVEY**

The Contractor will set the construction stakes establishing lines, grades, and elevations to include necessary utilities and appurtenances and will be responsible for their conformance with plans and specifications. All construction survey is incidental to the Contractors bid proposal. Construction staking will be done in accordance with the applicable provisions of the Public Works Design and Construction Management Division's "Standard Requirements for Staking, As-Builts, and Quantity Calculations", dated January 1, 1980. The Engineer will establish or designate a control line and benchmark of known location and elevation for use as a reference.

The Contractor will furnish the Engineer a certified set of calculations and measurements to fully support the derivation of all pay quantities. This information will be prepared by a registrant of the Arizona State Board of Technical Registration.

The Contractor will furnish the Engineer a set of "Record Drawings". Record drawings will be certified by a registrant of the Arizona State Board of Technical Registration.

14. **RECORD DRAWINGS**

The Contractor will maintain a record set of plans at the job site. These will be kept legible and current and will show all changes or work added in a contrasting, reproducible color. When the project is substantially complete, the Contractor will submit these plans to the Engineer for approval. When landscaping is included, the Contractor will submit, prior to final inspection, corrected landscape drawings showing the location of all utility services, controller, pipe, valves, and wiring. The Engineer will be the sole judge as to the acceptability of the record plans and receipt of an acceptable set is a pre-requisite for final payment.

15. **TESTINGS**

Soils backfill, pad, welding, roofing should be included in the contractor's proposal/price. Copies of all testing needed to be simultaneous sent via email or messenger to the developer.

16. **PRECONSTRUCTION CONFERENCE**

After the Contract documents are successfully completed, to include bonds, insurance, and signatures, and prior to the commencement of any work on the project, the Project Manager, will schedule a Pre-Construction Conference.

The purpose of this conference is to establish a working relationship between the Contractor, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, emergency telephone numbers for all representatives involved in the course of construction, and establishment of the notice to proceed date.

Minimum attendance by the Contractor will be a responsible company/corporate official, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the Contractor's safety officer.

17. **IMMIGRATION REFORM AND CONTROL ACT**

Compliance with Federal Laws Required. Contractor understands and acknowledges the applicability of the Immigration Reform and control Act of 1986 and the Drug Free Workplace Act to him. Contractor agrees to comply with these Federal Laws in performing under this Agreement and to permit City inspection of his personnel records to verify such compliance.

18. **LEGAL WORKER REQUIREMENTS**

The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

- A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
- B. A breach of a warranty under paragraph A will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
- C. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph A.

19. **CONTRACTOR AND SUBCONTRACTOR BACKGROUND SCREENING**

Contract Worker Background Screening Contractor agrees that all contract workers and subcontractors [collectively "Contract Worker(s)"] that Contractor furnishes to the City pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense as set forth in this Section. The Background Screening provided by Contractor will comply with all applicable laws, rules and regulations. Contractor further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Agreement or Contractor's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers will take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement. The City may, in its sole discretion, accept or reject any or all of the Contract Workers proposed by Contractor for performing work under this Agreement.

Background Screening Requirements and Criteria

Contractor agrees that it will verify legal Arizona worker status as required by Arizona Revised Statutes (A.R.S.) § 41-4401. Contractor further agrees that it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City.

Additional City Rights Regarding Security Inquiries

In addition to the foregoing, the City reserves the right but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Agreement.

Contractor Certification

By executing this Agreement, Contractor certifies and warrants that Contractor has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Agreement, Contractor further certifies and warrants that Contractor has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Agreement will not be proposed to perform work under other City contracts or engagements without the City's prior written approval.

Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts

Contractor will include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.

Materiality of Background Screening Requirements; Indemnity

The Background Screening requirements of this Section are material to the City's entry into this Agreement and any breach of this Section by Contractor will be deemed a material breach of this Agreement. In addition to the indemnity provisions as defined in Supplementary Conditions paragraph .05, Contractor will defend, indemnify and hold harmless the City for any and all Claims arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.

Continuing Duty; Audit

Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section will continue throughout the entire term of this Agreement. Contractor will notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Contractor will maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section.

20. **CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS**

A Contract Worker (Contractor's employees and subcontractors) will not be allowed to begin work in any City facility without: (A) The prior completion and the City's acceptance of the required background screening; and (B) When required, the Contract Worker's receipt of a City issued Badge. A badge will be issued to a Contract Worker solely for access to the City facility(s) to which the Contract Worker is assigned. Each Contract Worker who enters a City facility must use the badge issued to the Contract Worker.

Badges

After receipt of the badge application, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker will comply with all requirements and furnish all requested information as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

Key Access Procedures

If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Contractor for each key issued.

Stolen or Lost Badges or Keys

Contractor will report lost or stolen badges or keys to the City immediately. A new badge application or key issue form will be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

Return of Badges or Keys

All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.

Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach

Contractor's default under this Section will include, but is not limited to, the following: (1) Contract

Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this Section will constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Contractor will be liable for and will pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Contractor R breaches this Section. The parties further agree that three (3) breaches by Contractor of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Contractor of this Section arising out of the same default within a period of twelve (12) consecutive months will constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.

21. **LAWFUL PRESENCE REQUIREMENT**

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

22. **BUSINESS AND OPERATION LICENSES, PERMITS AND CERTIFICATIONS REQUIRED**

On or before the submission of a bid for this project, bidder must possess all federal, state, county and City licenses, permits, certifications and any other legal authorizations required by law to transact business and to perform the services set forth in this Agreement (collectively "Business Licenses"). Bidder will submit a completed Bidder's Disclosure Statement as set forth in Pages B.D.S. - 1 to B.D.S. - 4, to be submitted within 3 days of bid opening by 5 p.m. and provide the following Business License information: (i) proper State of Arizona contractors license classification and number; (ii) City of Phoenix transaction privilege license number; (iii) federal tax identification number; and (iv) any special use or other zoning permits required for Bidder's operation and performance of the services under this Agreement. Unless provided otherwise in this solicitation, Bidder ***will be deemed non-responsive and the bid rejected if Bidder fails to possess the proper Business Licenses at the time of bid or fails to submit a substantially completed Bidder's Disclosure Statement*** as specified in this paragraph.

23. **TAX LIABILITIES; DISCLOSURE OF CONVICTIONS AND BREACH(S) OF CONTRACT**

On or before the award of the contract for this project, the successful bidder will: (i) file all applicable tax returns and will make payment for all applicable State of Arizona and Maricopa County Transaction Taxes (ARS Sec. 41-1305) and City of Phoenix Privilege License Taxes (Phoenix City Code Sec.14-415); (ii) disclose any civil fines, penalties or any criminal convictions,

other than for traffic related offenses, for violation of federal, state, county or city laws, rules or regulations including, but not limited to, environmental, OSHA, or labor compliance laws (collectively "Laws") by Bidder, Bidder's directors, managing members, responsible corporate officers or party who will be responsible for overseeing and administering this project (collectively "Bidder"); and (iii) disclose any material breach(s) of an agreement with the City of Phoenix, any termination for cause or any litigation involving the City of Phoenix occurring within the past three calendar years. Unless provided otherwise in this solicitation, the successful bidder will be deemed non-responsible and the bid rejected for any of the following: (i) Bidder's civil or criminal conviction, other than for traffic related offenses, for a violation of Laws within the past three calendar years; (ii) liability or culpability resulting in payment of fines or penalties in the cumulative total amount of \$100,000 or greater for a violation of "Laws" within the past three calendar years; (iii) material breach of a City of Phoenix agreement, termination for cause or litigation with the City of Phoenix within the past three calendar years; and (iv) Bidder's failure to disclose the information as required by this provision. Further, after award of contract, in addition to any other remedy, Bidder's failure to remit proper taxes to the City of Phoenix may result in the City withholding payment pursuant to Phoenix City Charter Chapter XVIII, Section 14 until all delinquent taxes, interest, and penalties have been paid.

State and Local Transaction Privilege Taxes:

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes.

It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance.

If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your bid. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your bid is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability.

If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in a bid price.

Tax Indemnification:

Contractor will, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor will, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

Tax Responsibility Qualification:

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest).

Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes.

Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

24. **LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)**

The Contractor will provide an easily accessible area to serve the construction site that is dedicated to the separation, collection and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The contractor must provide documentation that the materials have been taken to a Maricopa County approved recycling facility.

25. **PROTEST PROCEDURES**

Any bidder who has any objections to the awarding of a contract to any bidder by the City of Phoenix, pursuant to competitive bidding procedures, will comply with Phoenix City Code Chapter 2, Section 188."

26. **UTILITY-RELATED CONSTRUCTION DELAY DAMAGES CLAIM PROCEDURES**

The following procedure is intended to provide a fair and impartial process for the settlement of construction delay claims associated with unknown or improperly located utility facilities.

The Contractor will immediately notify, in writing, the Project Engineer of any potential utility-related delay claim.

The Contractor will immediately notify the appropriate liaison of the affected utility verbally, followed by a written notification.

The Contractor will coordinate an investigation of the situation with the affected utility and the City's Project Manager. After resolution, the Contractor will provide written notification of the settlement of the claim to all affected parties.

If the affected utility makes a decision to handle negotiations for a claim, their personnel will be responsible for monitoring the project and all negotiations with the Contractor regarding the claim.

The Contractor will determine to document requirements of the affected utility for their acceptance of responsibility for the claims. The Contractor will provide four (4) copies of the required documentation to the utility involved and two (2) copies of this documentation to the Project Engineer. The Contractor will obtain written confirmation from the utility company involved of their documentation requirements.

27. **PROMPT PAYMENT (DBE)**

The City adheres to the prompt payment provisions of ARS 34-221. A prompt payment clause will be included in every City Contract or subcontract on projects funded either in whole or in part by USDOT. The City's prompt payment clause reads as follows:

A. **Contractor Payment to Subcontractor or Supplier.** Contractor will pay to its subcontractors or material suppliers and each subcontractor will pay to its subcontractor or material supplier, within seven (7) days of receipt of each progress payment, the amounts attributable to the Contractor, subcontractor, or material supplier for work performed or materials supplied. In addition, any reduction of retainage to the Contractor must also result in a like reduction to subcontractors for their work successfully completed within 14 days of the reduction of the retainage to the Contractor. No Contract between Contractor and its Contractors,

subcontractors, and material suppliers may materially alter the rights of any Contractor, subcontractor, or material supplier to receive prompt and timely payment as provided herein. Any diversion by Contractor, or any subcontractor, of payments received for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes sufficient grounds for City to take any one or more of the following actions: 1) withhold future payments including retainage until proper disbursement has been made; 2) refusal of all future bids or offers from the Contractor for a period not to exceed one year or 3) cancellation of the Contract.

- B. **Alternate Dispute Resolution.** If entitlement to the payment is in dispute, the parties to the dispute will submit the matter to either: a) binding arbitration, b) to some other binding alternative dispute resolution (ADR), or c) a City of Phoenix facilitated mediation process within a reasonable period of time, not to exceed fourteen (14) calendar days. Once an ADR determination has been made on any disputed claim, the determination will be implemented by the disputing parties within seven (7) calendar days of that determination.
- C. **Inspection and Audit.** The provisions of A.R.S. Section 35-214, will apply to this Agreement. City will perform the inspection and audit function specified therein and such inspection and audit may include, at City's option, sole and unfettered discretion, the prompt payment requirements contained in Paragraph 1, above.
- D. **Non-waiver.** Should City fail or delay in exercising or enforcing any right, power, privilege or remedy under this Section, such failure or delays will not be deemed a waiver, release or modification of the requirements of this Section or of any of the terms or provisions thereof.
- E. **Inclusion of this Provision in Subcontracts.** Contractor will include the provisions of these paragraphs in every subcontract, including procurement of materials and leases of equipment.
- F. **No Subcontractor Claim.** Nothing contained in this section will provide a basis for any subcontractor to assert any claim against the City of Phoenix for its administration, enforcement or waiver of the provisions of this Prompt Payment provision.

As this is a federally assisted project, it is subject to the requirements of Executive Order 11246 pertaining to Equal Employment Opportunity.

28. **CHANGE ORDERS**

Owner reserves the right to decrease adjustments made in any change order if, upon audit of Contractor's records, the audit discloses Contractor provided false or inaccurate cost and pricing data in negotiating the change order. In enforcing this provision, the parties will follow the procedure provided in the Federal Acquisition Regulation (FAR) clause 52.214-27, found in 48 CFR Part 52.

29. **ADA AND ANSI ACCESS OF PREMISES DURING CONSTRUCTION**

Contractor will maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements will include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Contractor will be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

30. **PROJECT MANAGEMENT INFORMATION SYSTEM (UNIFIER)**

The Aviation Department requires all project related documents to be uploaded to UNIFIER. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the Aviation Department Project Manager.

- A. The Contractor will be required to maintain all project records in electronic format. The City provides an Application Service Provider (ASP) web based project management database which the Contractor will be required to utilize in the fulfillment of the contract requirements. Although this electronic platform does not fulfill this requirement in its entirety, the Contractor will be required to utilize this platform as the basis for this work. The City will provide training to the Contractor's designated staff members and will provide online access to the UNIFIER software.
- B. The Contractor can expect to use this ASP to process all primary level tri-partite contract documents related to the construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, Change Orders, construction meeting minutes, Submittals, Design Professional's supplemental instructions and Payment Requests.
- C. The Contractor will be required to process information into electronic digital form. In order to fulfill this requirement, the Contractor will provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to web based ASP and transfer electronic data.
- D. The Contractor will provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform will function well in a web based environment utilizing an internet browser compatible with the Aviation Department UNIFIER ASP system.

31. **PAYMENT RETENTION**

At the start of construction, ten percent of all pay requests will be retained by the City to guarantee complete performance of the contract. When the work is fifty percent complete, this amount may be reduced to five percent providing that construction progress and quality of work is acceptable to the City. Any funds, which are withheld from the Contractor, will be paid no later than sixty days after completion of the Contract and settlement of all claims.

In lieu of retention, the Contractor may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.

CDs assigned to the City must be maintained at the City's single servicing bank, currently Chase Bank, Arizona, in the form of time deposit receipt accounts. CDs will be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow Agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4918.

Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Phoenix and be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow Agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4918.

32. **FAIR TREATMENT OF WORKERS**

The Contractor will keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He will at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The

contractor will protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

33. **CITY OF PHOENIX EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT**

1. In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
2. Any Contractor in performing under this contract will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and will adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

If the Contractor employs more than thirty-five employees, the following language will apply as the last paragraph to the clause above:

The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and will ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. *Documentation.* Contractor may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
4. *Monitoring.* The Equal Opportunity Department will monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

34. **WAGE DETERMINATION**

In the event that a wage determination decision of the Secretary of Labor is required for a project, (attached hereto on pages G.W.D. – 1 to 7 and made a part hereof), and has been superseded by any subsequent wage determination decision(s) published up to and including ten (10) days prior to bid opening, the most recent applicable wage decision will be incorporated by reference, and the successful bidder agrees to be bound by it, regardless of what is contained in the specifications. State or local wage rates will not apply if the state or local wage rate exceeds the corresponding Federal Wage Determination rate.

35. **WORKFORCE REPORTING REQUIREMENTS**

The contractor will submit payrolls electronically through the internet to the City of Phoenix web-based certified payroll tracking system. The City of Phoenix uses the "LCP Tracker" web-site to track the certified payroll information. Additional information regarding the use of this system is

available at <https://lcptracker.com>. This requirement will also apply to every lower-tier subcontractor that is required to provide weekly certified payroll reports.

36. **PAYMENT WITHHOLDING**

Payrolls, including subcontractor's payrolls, must be submitted weekly no later than seven (7) days after each pay period ending date. Payments may be withheld in part or in full until payrolls are received and reviewed to assure compliance of the Federal Labor Standards.

Failure to clarify, when requested, discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the Federal Wage Decisions contained in the Contract documents may also affect the complete or timely release of payments.

37. **LABOR COMPLIANCE PRECONSTRUCTION CONFERENCE**

On all federally assisted projects, a Labor Compliance Conference must be held after project award and prior to the established Notice to Proceed. This meeting is separate from and in addition to the pre-construction conference.

The successful bidder will schedule the conference by calling the Labor Compliance Office, (602) 261-8287. Minimum attendance will be a corporate officer, who is authorized to execute and sign documents for the firm and the payroll representative of the prime, sub and lower-tier Contractors.

38. **DBE PARTICIPATION**

This project will utilize Federal funds provided by the Federal Aviation Administration (FAA) and is subject to the requirements of 49 Code of Federal Regulations (CFR) Part 26 and the U.S. Department of Transportation DBE Program. The Contractor is required to meet the DBE program requirements and agrees to provide opportunities for the fair and full utilization of DBEs. For this business opportunity, the City has not established a race- and gender-conscious DBE participation goal.

To participate in this business opportunity as a recognized DBE, only firms certified by the City or another AZUCP member and certified in the specified scopes of work will be considered in calculating DBE participation resulting from RGN measures on this contract.

The Contractor agrees that the following will be incorporated into all subcontracts of this Contract entered into by the General Contractor:

"The contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will carry out applicable requirements of 49 CFR Part 26, in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract and/or any other such remedy as the City deems appropriate."

Refer to the attached Disadvantaged Business Enterprise Program Clause, pages D.B.E.C. - 1 to 9 and Disadvantaged Business Enterprise Program Reporting Forms D.B.E.F. - 1 to 2.

Failure to provide the following forms may be just cause for declaring your bid non-responsive.

- *Completed Documentation of Outreach Efforts Attachment A form (Page D.B.E.F. -1)*

39. **FEDERAL REQUIREMENTS COMPLIANCE**

This project will utilize federal funds provided by the Federal Aviation Administration. The Contractor will be required to meet all federal requirements as they pertain to this contract. Page F.R. - 1 contains a listing of the minimum requirements.

Buy American Preference

The Contractor is required to comply with Buy American preferences established under Title 49 U.S.C. Section 50101. Unless otherwise formally approved by the Federal Aviation Administration, all acquired steel and manufactured products installed must be produced in the United States. Be advised that the North American Free Trade Agreement does not apply to Aviation Improvement Projects.

As a condition of bid responsiveness, Bidders must submit the appropriate Buy American certification with their proposal. Installation of equipment/material that are manufactured in the United States and for which no formal waiver exists is ineligible. While the FAA does have the authority to waive the Buy American provisions if specific conditions exist, the Contractor will not assume such a waiver is valid unless written approval is granted by the FAA. The "Buy American Requirement" certification form (Attachment 1) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Non-Segregated Facilities

The Contractor and its subcontractors certifies that they do not maintain or provide for its employees any segregated facilities at any its establishments, and that it does not permit its employees to perform their services at any location, under its control where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The "Certification of Non-Segregated Facilities" certification form (Attachment 7) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Lobbying and Influencing Federal Employees

No Federal appropriated funds will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor will complete and submit Standard Form-LLL, "Disclosure of Lobby activities," in accordance with its instructions. The "Affidavit By Contractor That There was No Collusion in the Selection of the Contract" certification form (Attachment 2) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Rights to Inventions

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which the contract is executed. The "Rights in Data and Rights in Invention" certification form (Attachment 3) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor and its subconsultants/subcontractors, by submission of its bid proposal certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting its bid proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts.

Where the Contractor or any lower tier participant is unable to certify this statement, it will attach an explanation to its bid. The "Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters" form (Attachment 8) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Trade Restriction Clause

The "Trade Restriction Clause" form (Attachment 4) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Restrictions on Public Works Contracts

The "Restrictions on Federal Public Works Projects Certification" form (Attachment 5) is due with the bid. ***Failure to properly complete, sign and submit the form with bid will result in bid rejection.***

Equal Employment Opportunity

The Contractor agrees that it will undertake affirmative action in conformance with 14 CFR Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The Contractor further agrees that it will require its covered suborganizations to provide assurances to the Contractor that they similarly will undertake affirmative action and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

If the Contractor is a construction contractor on the Airport, the Contractor will submit to the City of Phoenix the reports required by paragraph (e) of 14 C.F.R. § 152.415, on the same basis as stated in paragraph (e) of 14 C.F.R. § 152.415, and the Contractor will require each subcontractor to submit the reports required by paragraph (f) of 14 C.F.R. § 152.415 through the Contractor to the City of Phoenix, for transmittal by the City of Phoenix to the FAA. The "Contractors Statement on Previous Contracts subject to EEO Clause" certification form (Attachment 6) ***is due prior to contract award.***

Federal Affirmative Action Requirements

The Contractor will comply with the federal Affirmative Action requirements as provided by 14 C.F.R. Part 152, subpart E during the term of the Contract and the Contractor will require its subcontractors to also comply with the federal Affirmative Action requirements as set out above, and as may be amended. Failure of the Contractor and its subcontractors to maintain compliance during the term of the Contract, including renewal options, is a material breach and may result in termination of this Contract.

40. **RELEASE OF INFORMATION – ADVERTISING AND PROMOTION**

The Contractor and its subcontractors will not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which services are performed will not be used in any advertising or other promotional context by Contractor and its subcontractors without the prior written consent of the City.

41. **NO ISRAEL BOYCOTT**

By entering into this contract, the Contractor certifies that they are not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, as defined in the state statute.

**Disadvantaged Business Enterprise (DBE) Program
DBE –Design Bid Build (DBB) Contract Clause
Race & Gender-Neutral – Non-Negotiated**

PROJECT #: AV41000075-1 FAA

CONTRACT #: TBD

PROJECT NAME: GYR Taxiway A Rehabilitation and Strengthening

The City of Phoenix Disadvantaged Business Enterprise (DBE) Program is administered by the Equal Opportunity Department, Contract Compliance Division. Phoenix is one of the fastest growing, multicultural cities in the country and has shown a historical commitment to business diversity. The City strives to advance the economic growth of local businesses through its Disadvantaged Business Enterprise (DBE) Program.

Through a coordinated effort among several city departments, the DBE Program provides DBE certification, procurement opportunities, construction subcontracting utilization, small business management, technical assistance, educational services and networking opportunities.

SECTION I DEFINITIONS

Agency means the City of Phoenix for purposes of this Contract.

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://adot.dbesystem.com/> . The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

Bidder means an individual, partnership, Joint Venture (JV), corporation or firm that tenders a bid to the Agency to perform services requested by a solicitation or procurement. The bid may be direct or through an authorized representative.

Commercially Useful Function means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

DBE stands for Disadvantaged Business Enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

DBE Compliance Specialist means an Agency employee responsible for compliance with the DBE contract clause and contract monitoring.

EOD means the City of Phoenix Equal Opportunity Department.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter shall identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and Small Business participation, disclose results of negotiations with DBEs and Small Businesses, communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

Race and Gender-Neutral (RGN) Measures means a measure or program that is, or can be, used to assist all Small Businesses.

Small Business means, with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). "Small Business" and "Small Business Concern" are used interchangeably in this DBE Contract Clause.

Subcontract means a contract at any tier below the prime contract, including a purchase order.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the prime contract, including a vendor under a purchase order.

Successful Bidder means a firm that has been selected by the Agency to perform services or furnish supplies requested by a solicitation or procurement.

SECTION II GENERAL REQUIREMENTS

A. Applicable Federal Regulations

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Bidder shall provide all relevant information to enable the required reporting.

B. DBE Participation

For this solicitation, the Agency has *not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency *encourages* each Bidder to voluntarily subcontract with DBEs and Small Businesses to perform

part of the work—a Commercially Useful Function—that Bidder might otherwise perform with its own forces.

C. Counting DBE Participation

The Agency will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.phoenix.gov/eod.

D. DBE Certification

Only firms (1) certified by the Agency or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Agency’s tracking and reporting obligations to USDOT.

E. Civil Rights Assurances

As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Bidder, and each Subcontract signed by the Successful Bidder and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, Successful Bidder is the “contractor.”

SECTION III REQUIRED OUTREACH EFFORTS

The Agency has implemented outreach requirements for this Contract. Specifically, Bidders shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Bidder fails to conduct these Outreach Efforts or fails to submit the required documentation of Bidder’s Outreach Efforts as indicated in Section IV, Parts A and B below, the Agency may determine that the Bidder is nonresponsive. A determination of non-responsiveness *disqualifies* Bidder from further consideration for the Contract award.

SECTION IV. BID REQUIREMENTS

A. Documentation due at time of bid:

All required Outreach Efforts documentation due with the bid must be submitted in a separate sealed envelope with the bid submittal.

1. Attachment A (Outreach Efforts)

Each Bidder shall submit **Attachment A with Columns A through D** completed to document their diligent and earnest Outreach Efforts.

- a. Each Bidder shall list in **Attachment A** all Small Businesses, including DBEs, contacted by Bidder in preparing its bid. Each Bidder shall also provide the following minimum information to document its Outreach Efforts. The DBE Compliance Specialist will consider this information to determine whether Bidder has demonstrated the required Outreach Efforts:
 - 1) Each business's full legal name and contact information;
 - 2) Business status (DBE, Small Business, SBE, or unknown);
 - 3) Scope of work solicited (brief description, percentage of contract value); and
 - 4) Solicitation method (personal contact, telephone, fax, e-mail, other).
- b. Each Bidder shall complete **Columns A through D on Attachment A** in accordance with the following instructions:
 - 1) Each Bidder shall actively contact Small Businesses for each scope of work or business opportunity selected for Outreach Efforts (**Columns A and C**).
 - 2) Bidder's contacts with Small Businesses should occur well before the deadline for the bid to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
 - 3) Bidder shall ask each firm to indicate the number of its employees (**Column A**).
 - 4) For each Small Business's annual gross receipts, Bidder shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure (**Column A**).

B. Documentation due within THREE (3) BUSINESS DAYS of the Bid Deadline

All required Outreach Efforts documentation is due within the three (3) business days of the bid deadline must be submitted in a sealed envelope.

1. Attachment A (Outreach Efforts)

Each Bidder shall submit **Attachment A with Columns E and F** completed to document its diligent, earnest Outreach Efforts.

- a. Each Bidder shall add the following to a copy of the **Attachment A** submitted with the bid. The DBE Compliance Specialist will consider this information to determine whether Bidder has demonstrated the required Outreach Efforts:
 - 1) Selection process; and
 - 2) Communication of selection outcome to each participant.*
Bidder shall provide supporting documentation that shows Bidder has communicated its final selection decisions and outcomes to **all Small Businesses, including those **not** selected to participate in this Contract.*
- b. Each Bidder shall complete **Attachment A** in accordance with the following instructions.

- 1) If Bidder does not select a Small Business to participate in the Contract, Bidder shall explain the reason why (**Column E**).
- 2) Bidder shall notify each Small Business contacted whether or not Bidder selected the firm. Bidder shall notify all firms not selected, and Bidder shall state when (date) and how (method) the selection outcome was communicated to each firm (**Column F**).

2. Attachment A Supporting Documentation

Each Bidder shall complete and submit supporting documentation of its Outreach Efforts related to **Attachment A – as specifically related to Columns D & F**.

- a. Within THREE (3) Business Days of the Bid Deadline, Bidder shall submit all supporting documentation of Bidder's contacts with Small Businesses for each scope of work or business opportunity in regards to their Outreach Efforts.
- b. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to interested Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.
- c. For all of the above documentation, if Bidder uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Bidder must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Bidder shall document the date and time of the call and the names of the respective persons representing Bidder and the Small Business.
- d. Bidder shall submit documentation that establishes how Bidder communicated its selection decisions and outcomes to each Small Businesses **SELECTED OR NOT SELECTED** for this Contract. This documentation may be in the form of a letter, e-mail, or a telephone log and must show the name of the person contacted and date.
- e. For all of the above documentation, if Bidder uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Bidder must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Bidder shall document the date and time of the call and the names of the respective persons representing Bidder and the Small Business.

3. Attachment B (Small Business Utilization Commitment)

Due within THREE (3) BUSINESS DAYS of the Bid Deadline. Bidder shall sign and submit **Attachment B within the three (3) business days of the bid deadline**, Attachment B commits Bidder to the Agency as follows:

- a. **The firms indicated as "selected" in Attachment A** will participate in the Contract;
- b. Bidder will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections V and VI below;

- c. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
- d. The proposed total Small Business participation percentage is true and correct.

Bidder shall ensure that the percentages proposed for Small Business participation on **Attachment A** equal the total percentage proposed in **Attachment B**.

C. Failure To Meet Outreach Requirements

The DBE Compliance Specialist will determine, in writing, whether the Bidder has satisfied all outreach requirements. If the DBE Compliance Specialist determines the Bidder failed to satisfy the outreach requirements (specified in Sections III and IV), then the DBE Compliance Specialist may determine the bid is nonresponsive. A determination of non-responsiveness *disqualifies* Bidder from further consideration for the Contract award. The Agency shall send written notice to Bidder stating the basis for the DBE Compliance Specialist's decision.

D. Administrative Reconsideration

If the DBE Compliance Specialist determines the Bidder failed to submit required documentation, the Bidder may request EOD's reconsideration of this determination. In its request for reconsideration, Bidder may *clarify* its bid but may *not* submit or refer to new or revised documents or information. EOD will only reconsider the original bid as clarified in the request for reconsideration.

If Bidder requests EOD to reconsider the DBE Compliance Specialist's determination of non-responsiveness based on insufficient demonstration of outreach efforts or good faith efforts in its waiver request, Bidder must provide written notice to EOD within three (3) business days of the Agency's notice of disqualification to Bidder. The request for reconsideration should be addressed to:

City of Phoenix Equal Opportunity Department
Business Relations Division-Contract Compliance Section
200 West Washington Street, Fifteenth Floor
Phoenix, AZ 85003

With a *copy* e-mailed to the Procurement Officer and the DBE Compliance Specialist.

SECTION VI POST-AWARD COMPLIANCE REQUIREMENTS

A. Subcontracting Commitment

Within 30 days after Contract award and prior to each GMP, the Successful Bidder shall submit to Agency a list of all subcontractors and copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Bidder and any Small Business.

The Successful Bidder shall not terminate any Small Business Subcontracts, and the Successful Bidder shall not alter the scope of work or reduce the Subcontract amount, without the DBE Compliance Specialist's prior written approval. Any request to alter a Small Business Subcontract must be submitted in writing to the DBE Compliance Specialist before any change is made. If the Successful Bidder fails to do so, the Agency may declare Successful Bidder in breach of contract.

B. Post-Award Relief From DBE Requirements

After Contract award, the Agency will not grant relief from the proposed Small Business utilization except in extraordinary circumstances. The Successful Bidder's request to modify Small Business participation must be in writing to the DBE Compliance Specialist, which has final discretion and authority to determine if the request should be granted.

The Successful Bidder's waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the DBE Compliance Specialist should consider. The Successful Bidder shall include with the request all documentation of its attempts to subcontract with the Small Business and any other action taken to locate and solicit a replacement Small Business.

If an approved DBE allows its DBE status to expire or its DBE certification is removed during the course of the subcontract, the Agency will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scopes of work negotiated after expiration or revocation of the DBE's certification may be counted. Likewise, any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

C. Substitutions

If a DBE was approved by the Agency, but the firm subsequently loses its DBE status before execution of a contract, the DBE Compliance Specialist will consider whether or not the Successful Bidder has exercised diligent and good-faith efforts to find another DBE as a replacement. The Successful Bidder shall notify the DBE Compliance Specialist in writing of the necessity to substitute a DBE or Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE or Small Business may not occur before the DBE Compliance Specialist's written approval has been obtained.

D. Prompt Payment of Subcontractors

The Successful Bidder must promptly pay its subcontractors, subconsultants, or suppliers within 30 calendar days of receipt of each progress payment from the Agency. **For projects governed by Title 34 of the Arizona Revised Statutes, payment must be made within seven (7) calendar days.** If the Successful Submitter diverts any payment received for a DBE's, Small Business's, or other Subcontractor's work performed on the Contract or fails to reasonably account for the application or use of the payment, the Agency may declare the Successful Submitter in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Successful Bidder must ensure prompt and full release of retentions to Subcontractors and suppliers when their scope of work is complete, the Agency has accepted the work, and the Agency has paid Successful Submitter for the work. The Successful Bidder shall pay each Subcontractor's and supplier's retention no later than 30 days after the Agency has accepted and paid for the scope(s) of work, regardless if there's outstanding retention held against the Successful Bidder. If the Agency reduces the Successful Bidder retention, the Successful Bidder shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Successful Bidder from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

E. Sanctions and Penalties

If the Successful Submitter fails to comply with these contract provisions and the requirements set forth in 49 CFR Part 26, the Agency may take any one or more of the following actions:

1. Withholding from the contractor ten percent (10%) of all future payments on the involved eligible project until it is determined that the contractor is in compliance;
2. Withholding from the contractor all future payments on the involved project until it is determined that the contractor is in compliance

Failure to cure a non-compliance status within the time frame provided by the City may result in further action, including but not limited to imposing any or all of the following sanctions:

1. Rejection of all future bids or offers from the contractor for any eligible project with the City or any of its departments or divisions for a period of (1) year after substantial completion of the contract.
2. Cancellation of the contract.

SECTION VII RECORDS & REPORTING REQUIREMENTS

A. Records

During performance of the Contract, the Successful Bidder shall keep all records necessary to document DBE and Small Business participation. The Successful Bidder shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records may include but not limited to:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices: and
5. Copies of all payment documentation.

B. Reports

At the beginning of *each* month, the Successful Bidder must enter payment information and the following documentation into the Agency's web-based Certification and Compliance System.

1. The total of all payments received from the City during the previous month.
2. The first two pages of each payment application submitted for those payments.
3. All payments made to Subcontractors during the previous month.

The reporting system can be found at <https://phoenix.diversitycompliance.com>.

Before the Agency processes the Successful Bidder's final payment and/or outstanding retention held against the Successful Bidder, the Successful Bidder shall submit to the Agency a final certification of full and final payment to each Subcontractor in the form prescribed by the Agency. The form must be completed and certified by the Successful Bidder's and each Subcontractor's duly authorized agents.

SUPPLEMENTARY CONDITIONS

1. STANDARD SPECIFICATIONS AND DETAILS

Except as otherwise required in these specifications, bid preparation and construction of this project will be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest revision, and the City of Phoenix Supplements, latest revision to the MAG Uniform Standard Specifications and Details.

2. PRECEDENCE OF CONTRACT DOCUMENTS

In case of a discrepancy or conflict, the precedence of contract documents is as follows:

1. Change Orders or Supplemental Agreements
2. Addenda
3. Contract Specifications/Special Provisions/Technical Provisions
4. The Plans
5. COP Supplement to MAG Standard Specifications and Details, latest revision
6. MAG Standard Specifications and Details, latest revision

The precedence of any Addenda falls within the category of which it represents.

3. PARTIAL PAYMENTS

The contracting agency will make a partial payment to the Contractor on the basis of an approved estimate prepared by the Engineer or the Contractor for work completed and accepted through the preceding month. The notice to proceed date, which is designated for the specific project involved, will be used as the closing date of each partial pay period. Payment will be made no later than fourteen (14) days after the work is certified and approved. City will review payment request and make recommendation of approval or denial within 7 calendar days. The contractor will attach to each monthly pay application the following documents:

- A. A completed and signed City of Phoenix Equal Opportunity Department DBE Utilization form.
- B. All current certified pay roll reports and statement of compliance (to be completed through the date of the pay application).
- C. Current record Drawings complete and current at the time of the monthly pay application. The contractor will review the most current Record Drawings with the Engineer at the time the payment application is submitted. If the Engineer determines that the Record Drawings are not complete, the Contractor will update the Record Drawings as directed, prior to re-submitting the monthly payment application.
- D. Certified quantity calculation to justify all pay quantities and amounts requested.
- E. A critical path method schedule monthly update report and compliance certificate.
- F. Failure to provide all of the completed documents as listed above will result in the Engineer returning the monthly pay application to the Contractor with no action.

4. MAG SUBSECTION 105.15(B) FINAL ACCEPTANCE

Delete this subsection and substitute the following:

- B. Substantial Completion

The work may be judged substantially complete when all construction has been completed with the possible exception of final inspection punch list work. The purpose of granting or acknowledging substantial completion is to stop Contract time. This is particularly important to the Contractor if Contract time is exhausted or nearly so and/or punch list work is anticipated to extend beyond the allotted time. Granting of substantial completion will eliminate the possibility of incurring liquidated damages or additional liquidated damages beyond the substantial completion date, whichever case may apply.

In the event that the Engineer grants substantial completion, the Contractor will have thirty (30) days thereafter to complete punch list work, unless additional time is granted—in writing—by the Engineer. In no case will a Contractor be granted more than thirty (30) days to complete punch list work, unless there are extenuating circumstances such as delay in shipment of a specialized piece of equipment, labor strike, or other circumstances beyond the Contractor's control which would necessitate a further time extension.

C. Penalty for Failure to Complete Punch List Work Within Specified Time

In the event the Contractor fails to complete the punch list work within thirty (30) days following the Contract completion date, or in the case of specialized situations within the additional time allotted by the Engineer, the Contractor may be declared in default, and the Engineer may order the work completed by others.

In the event of default, as described herein, the Engineer will withhold from the Contractor's final payment, an amount equal to at least twice the estimated cost of the remaining work. In addition, the Engineer will withhold the retention deducted from Contract progress payments until all punch list work has been satisfactorily completed, whereupon twice the amount of the actual cost of completing the work will be deducted from the Contractor's final payment and the remaining funds, if any, including the Contract retention, will be released in accordance with the conditions set forth in Contract retention.

D. Contract Retention

This project will not be considered complete until all work has been completed, including punch list work. Under no circumstances will a Contractor receive any portion of the legally retained progress payments until the City has granted a final acceptance and/or acknowledged substantial completion. The following conditions will apply to each case:

1. Substantial Completion: The Engineer may reduce outstanding Contract retention to not less than one (1) percent of the total Contract amount, upon granting substantial completion, if the value of the punch list work is estimated to be less than one (1) percent of the total Contract.
2. Project Acceptance: Project acceptance implies that all punch list work is done and the improvements have been accepted by the City. Under these conditions, the retention will be fully released to the Contractor subject only to the signing of the standard claims affidavit and hold harmless clause required for all Contracts.
3. Final Release of Contract Retention and/or Release of More Than Ninety (90 Percent of the Contract Funds): Prior to final payment and release of monies retained and/or in the case of substantial completion where the Contractor has requested a reduction in Contract retention, the Contractor will be required to sign a claims affidavit agreeing to hold the City harmless from any and all claims arising out of the Contract.

5. INDEMNIFICATION OF CITY AGAINST LIABILITY

The Contractor agrees to indemnify, defend, save, and hold harmless the City of Phoenix and its officers, agents and employees (and any jurisdiction or agency issuing permits for any work included in the project, and its officers, agents and employees), ("Indemnatee") from all claims, actions, liabilities, damages, losses or expenses, (including court costs, attorney's fees and costs of claim processing, investigation and litigation) ("Claims") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Contractor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Contract. This indemnity includes any Claim or amount arising out of or recovered under workers' compensation law or on account of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Contractor must indemnify Indemnatee from and against any and all Claims, except those arising solely from Indemnatee's own negligent or willful acts or omissions. Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City's award of this Contract, Contractor agrees to waive all rights of subrogation against Indemnatee for losses arising from or related to this Contract. The obligations of Contractor under this provision survive the termination or expiration of this Contract.

6. **CONTRACTOR'S INSURANCE REQUIREMENTS**

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subconsultants. Contractor and subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

A. **Minimum Scope and Limits of Insurance**

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$5,000,000
Each Occurrence	\$5,000,000

a. The policy must be endorsed to include the following additional insured language: **"The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including completed operations"**.

b. Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

2. **Automobile Liability**

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$5,000,000

a. The policy must be endorsed to include the following additional insured language: **“The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor”**

b. Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. Policy must contain a **waiver of subrogation** against the City of Phoenix.

b. This requirement does not apply when a Contractor or subcontractor is exempt under A.R.S. 23- 902(E), **AND** when such Contractor or subcontractor executed the appropriate sole proprietor waiver form.

4. **No Builders' Risk Insurance required.**

B. Additional Insurance Requirements

The policies must include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage must be primary insurance and non-contributory with respect to all other available sources.
3. With regard to general liability, the City of Phoenix is named as an additional insured for both products completed operations and premises operations.

C. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within two business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice will be sent directly to the City of Phoenix Contracts Specialist listed on Page I.F.B. - 1 of these specifications and will be sent by certified mail, return receipt requested.

D. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an A.M. Best rating of not less than “B+VI”. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract will be sent directly to the City of Phoenix Contracts Specialist listed on Page I.F.B. - 1 of these specifications. The City project number, contract number, and project description will be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

F. Subcontractors

Contractor's certificate(s) must include all subcontractors as additional insured under its policies **or** subcontractors must maintain separate insurance as determined by the Contractor, however, subcontractors limits of liability will not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

G. Approval

Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

7. PERFORMANCE AND LABOR MATERIAL BOND

Prior to the execution of the Contract, the successful bidder must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the Contract. Each such bond will be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority will accompany the bonds. The Certificate will have been issued or updated within two years prior to the execution of the Contract. The bonds will be made payable and acceptable to the City of Phoenix. The bonds will be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds will have attached thereto a certified copy of Power of Attorney of the signing official. The Power of Attorney it will be for the total Contract amount. Personal or individual bonds are not acceptable. **Failure to comply with these provisions will be cause for rejection of the bidder's proposal.**

8. BONDING COMPANIES

All bonds submitted for this project will be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company. Failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.

9. CONFIDENTIALITY OF PLANS & SPECIFICATIONS

Any plans generated for this project must include the following statement in the Title Block on every page: "Per City of Phoenix City Code Chapter 2, Section 2-28, these plans are for official use only and may not be shared with others except as required to fulfill the obligations of Contractor's contract with the City of Phoenix."

10. DATA CONFIDENTIALITY

As used in the Contract, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Contract.

The parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Contract is confidential and proprietary information belonging to the City.

Except as specifically provided in this Contract, the Contractor or its subcontractors will not divulge data to any third party without prior written consent of the City. The Contractor or its subcontractors will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the Contractor or its subcontractors have first given the required notice to the City:

- A. Data which was known to the Contractor or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;
- B. Data which was acquired by the Contractor or its subcontractors in its performance under this Contract and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractor's knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or
- C. Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject.

In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor will first notify the City as set forth in this section of the request or demand for the data. The Contractor or its subcontractors will give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

The Contractor, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor or its subcontractors will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

The Contractor or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section will be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Contract without notice.

Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, Contractor must encrypt and/or password protects electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by Contractor or its subcontractors in connection with this Contract is believed to have been compromised, Contractor or its subcontractors will immediately notify the Project Manager and City Engineer. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this Section will be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

The obligations of Contractor or its subcontractors under this Section will survive the termination of this Contract.

11. MATERIALS CONTAINING ASBESTOS

Materials containing asbestos and/or lead in any form are unacceptable to incorporate into the project unless formally accepted in writing by the City of Phoenix. This written approval will take place prior to the material being incorporated into the project and/or brought to the site.

Repair kits or touch-up materials, materials that include asbestos and /or lead introduced into the product at the factory or applied at the assembly plant are all unacceptable. Any and all field-applied products that are comprised of asbestos and/or lead containing materials are also unacceptable.

If asbestos and/or lead are installed without written approval by City of Phoenix, the contractor will remove these materials at his expense and dispose of these materials in accordance with all state and federal laws and pay for the supervision and reporting costs in addition to the cost to properly remove them. The Contractor is required to submit MSDS documents for newly installed materials.

During construction, if the Contractor discovered or suspected any materials containing asbestos in the field, the Contractor will inform the City of Phoenix immediately, who will be in charge or removing and disposing off all asbestos containing materials.

12. DISPOSAL OF SURPLUS MATERIAL WHICH DOES NOT CONTAIN ASBESTOS

All surplus and/or waste material may be disposed of at the Contractor's discretion subject to the following conditions:

- A. If the City landfills are used, the Contractor will pay the normal dumping fee.
- B. If private property within the City limits is used, the Contractor will obtain written permission from the property Owner and deliver a copy of this Agreement to the Engineer prior to any hauling or dumping. All disposal and grading will be in strict conformance with the City of

Phoenix Grading and Drainage Ordinance. The Contractor will obtain and pay for the necessary permit(s).

- C. If the surplus material is disposed of outside the City limits, the Contractor will comply with all applicable laws/ordinances of the agency concerned and be responsible for all cost incurred.

No measurement or direct payment will be made for the hauling and disposal of surplus and/or waste material, the cost will be incidental to the cost of the project.

13. HAUL PERMIT

On any project, when the quantity of fill or excavation to be hauled exceeds 10,000 C.Y. or when the duration of the haul is for more than twenty (20) working days, the Contractor will:

- A. Obtain a written (no fee) haul permit from the Planning and Development Department.
- B. Obtain approval of the proposed haul route, number of trucks, etc., by the Street Transportation Department.

NOTE: Obtaining the haul permit and the approval by the Street Transportation Department does not release the Contractor from strict compliance with MAG Subsection 108.5, Limitation of Operations.

14. DEFINITIONS – MAJOR ITEMS

Section 101, page 8 of MAG Specifications – the definition of major item is changed to read:

Major Item: A major item is any bid item for work having an original dollar value equal to or greater than the amount shown below.

<u>Contract Amount</u>	Major Item is defined as any item equal to or <u>greater than the following</u>
Up to \$1 million	\$15,000 or 3%, whichever is greater
\$1 million to \$3 million	3% of the original Contract amount to a maximum of \$75,000.00
\$3 million to \$5 million	2.5% of the original Contract amount to a maximum of \$90,000.00
Over \$5 million	1.5% of the original Contract amount to a maximum of \$125,000.00

Contingency Items: Contingency items, which fall under the definition of a major item, are subject to negotiation if decreased by more than twenty (20) percent.

Contingency items will not increase more than twenty (20) percent without being subject to re-negotiation, regardless of the percentage of that item relative to the total Contract amount.

15. UNDERGROUND FACILITIES

The Contractor will make whatever investigation it deems necessary to verify the location of underground utility facilities. If such facilities are not in the location shown in the drawings, then (regardless of whether this is discovered prior to or during construction) the Contractor's remedies, if any, pursuant to Art. 6.3, Chapter 2, Title 40, A.R.S. (A.R.S. 40-360.21 through 40-360.32, "Underground Facilities"), will be the Contractor's sole remedy for extra work, delays, and disruption of the job, or any other claim based on the location of utility facilities. Locations of utility facilities

shown on drawings furnished by the City are to be regarded as preliminary information only, subject to further investigation by the Contractor. The City does not warrant the accuracy of these locations, and the Contractor, by entering into this Contract, expressly waives and disclaims any claim or action against the City under any theory for damage resulting from location of utility facilities.

The Contractor will be responsible for obtaining all Blue Stake utility location information, and for performing all requirements as prescribed in A.R.S. 40-360.21 through .29, for all underground facilities, including those that have been installed on the current project, until the project is accepted by the City.

At least two (2) working days prior to commencing any excavation, the Contractor will call the Blue Stake Center, between the hours of 7:00 a.m. and 4:30 p.m., Monday through Friday, for information relative to the location of buried utilities. The number to be called is as follows: Maricopa County, (602) 263-1100.

16. AUDIT AND RECORDS

Records of the Contractor's direct personnel payroll, bond expenses, and reimbursable expenses pertaining to this Project, and records of accounts between the City and Contractor will be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to three years following Final Acceptance of the Project.

The City, its authorized representative, and/or any federal agency, reserves the right to audit the Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Contract Documents and any change orders.

The City reserves the right to decrease Contract price and/or payments made on this Contract and/or request reimbursement from the Contractor following final contract payment on this Contract if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

The Contractor will include a similar provision in all of its contracts with subcontractors and suppliers providing services or supplying materials under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontractors' and suppliers' records to verify the accuracy of cost and pricing data.

The City reserves the right to decrease Contract price and/or payments made on this Contract and/or request reimbursement from the Contractor following final contract payment on this Contract if the above provision is not included in subcontractor and Supplier contracts, and one or more subcontractors or suppliers refuse to allow the City to audit their records to verify the accuracy and appropriateness of cost and pricing data.

If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

17. CHANGE ORDER REQUEST MARKUPS AND WORKSHEET

The General Contractor will conform to the following markups for change order work self-performed or performed by a subcontractor. The General Contractor will also utilize the Change Order Request Summary Worksheet (see page S.C. – 13) to summarize change order costs. The General Contractor will still submit all required backup and supplemental information, calculations, invoices, etc., required to justify and support General Contractor and subcontractor costs.

A. General Contractor Self-Performed Work and Subcontractor Work Markups

Overhead and Profit – The actual or approved costs for equipment, material, and labor will be marked up by 12%.

B. General Contractor Markups of Subcontractor Work

The General Contractor will be allowed to markup actual or approved subcontractor costs for equipment, material, and labor (excluding subcontractor overhead and profit) by 7.5%.

C. Bond

The General Contractor will be allowed to markup the cost for change order work for payment and performance bonds utilizing the same percentage used on the initial Contract and will submit verification of this percentage, from the bonding company, with the initial change order request.

D. Insurance

The General Contractor will be allowed to markup the cost for change order work plus Bond costs for property damage/public liability insurance, utilizing the same percentage used on the initial contract. Verification, from insurance carriers, of this percentage will be submitted with the initial change order request.

E. Sales Tax

The General Contractor will be allowed to markup the cost for change order work plus Bond and Insurance costs by the current, approved sales tax multiplier.

18. CONTROL OF WORK

Add the following to Uniform Standard Specifications for Public Works Construction (MAG), Section 105.1 AUTHORIZATION OF THE ENGINEER:

The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend the Work. Immediately after receiving such notice, the Contractor will discontinue advancing the work specified under this Agreement. Such suspension will not exceed one hundred and eighty (180) consecutive Days during the duration of the Project.

The Contractor may seek an adjustment of the Contract Price and Time, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by City.

19. COMMENCEMENT, PROSECUTION AND PROGRESS

Add the following to Uniform Standard Specifications for Public Works Construction (MAG), Section 108.10 FORFEITURE AND DEFAULT OF CONTRACT:

City's Right to Perform and Terminate for Cause:

If the City provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at the Contractor's expense.

If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv)

timely pay, without cause, Sub-consultants and/or Subcontractors, (v) prosecute the Contract Services with promptness and diligence to ensure that the Contract Services are completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, will have the rights set forth below.

Upon the occurrence of an event set forth above, City may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of Contractor's receipt of such notice.

If Contractor fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to Contractor of its intent to terminate within an additional seven (7) Day period.

If Contractor, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to Contractor of such declaration.

Upon declaring the Agreement terminated pursuant to the above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Contractor will not be entitled to receive any further payments under the Contract Documents until the Work will be finally completed in accordance with the Contract Documents. At such time, the Contractor will only be entitled to be paid for Work performed and accepted by the City prior to its default.

If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor will be obligated to pay the difference to City. Such costs and expense will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from Contractor's default.

20. DUST CONTROL & PREVENTION

To facilitate and encourage strict compliance with the Maricopa County Air Pollution Control Regulations pertaining to fugitive dust control, Contractor will submit the following documentation to the Project Manager at the preconstruction meeting prior to conducting any earth moving or dust generating activities under the Contract.

- a. Copy of a valid Maricopa County Earth Moving [Dust Control] Permit applicable to the work or services under the Contract.
- b. Copy of the Dust Control Plan applicable to the work or services under the Contract.
- c. Documentation that all of Contractor's on-site project managers have received the Comprehensive or Basic dust control training as required by Maricopa County Rule 310 based on project disturbed acres

For construction sites where 5-acres or more are disturbed, Contractor will designate and identify to the City an individual who has completed the dust control training set forth in Section 2 above as the site Dust Control Coordinator. The Dust Control Coordinator will be present on-site all times that earth moving or dust generating activities are occurring and until all ground surfaces at the site have been stabilized.

For construction sites less than 1-acre, the Contractor will designate an individual who has completed Basic Training to be on site at all times that earth moving or dust generating activities are occurring.

Contractor will notify the City of Phoenix, Aviation Department Project Manager within twenty-four (24) hours of any inspection, Notice of Violation, or other contact by the Maricopa County Air Quality Department with it or any of its subcontractors regarding the work or services under the Contract. A copy of any written communications, notices or citations issued to Contractor or any of its subcontractors regarding the work or services under the Contract will likewise be transmitted to the Project Manager within twenty-four (24) hours.

The Contractor will prevent any dust nuisance due to construction operations in accordance with MAG Specifications, Section 104.1.3, Cleanup and Dust Control. The Contractor will use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

The Contractor may be instructed by the Engineer to provide additional pavement cleaning (in parking lots, or other locations) above and beyond the normal expected cleanup and dust control required by MAG Section 104.1.3. If requested by the Engineer, the Contractor will clean the requested areas with a power pick-up broom.

Contractor agrees to indemnify and reimburse the City for any fine, penalty, fee or monetary sanction imposed on the City by Maricopa County arising out of or caused by the performance of work or services under the Contract. Contractor will remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

21. LABOR COMPLIANCE

Davis Bacon and Related Acts. The prevailing basic hourly wage rates and fringes benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis Bacon Act, will be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the Contract.

A Labor Standards Conference must be held prior to the start of construction. The Contractor will schedule the conference by calling the Labor Compliance Office at (602) 261-8287. Minimum attendance will be a corporate officer, who is authorized to execute and sign documents for the firm, and the payroll representative(s) responsible for preparing, reviewing and certifying weekly payroll reports. This requirement applies to all prime, sub and lower-tiered contractors expected to perform work on the project.

Payrolls, including subcontractor's payrolls, must be submitted weekly no later than seven (7) days after each pay period ending date. The Contractor will upon request, clarify discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the applicable federal wage decision for the project. Failure to provide payrolls or clarification of discrepancies may affect the timely release of payments and cause the withholding payment to the Contractor in accordance with Title 29, CFR Part 5.

29 CFR Parts 3, 5 and Wage Decision included in Labor Compliance (pages F.R. – 5 to 28 and G.W.D. – 1 to 7).

22. COMPLIANCE WITH FEDERAL LAWS

Contractor will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an

amendment may be submitted. Contractor is also required to certify its compliance with specified laws and in some cases Contractor will pass along these requirements to its subcontractors. If any of Contractors certifications is found to be false, the City may terminate this Contract or impose other remedies due to the false certification. If there is a conflict in interpretation between provisions in this Contract and stated Federal Provisions, the Federal Provisions will prevail.

CHANGE ORDER REQUEST SUMMARY WORKSHEET

Project: _____ COR# _____
Project No. _____ Date: _____

1. Change Order Request Identification

2. Subcontractor Costs

<u>Company</u>	<u>Base Cost</u>	+	<u>12% OH & P</u>	=	<u>Total</u>
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
TOTAL	<input type="text"/>		(2A)		<input type="text"/> (2B)

3. GC Markup of Subcontractor Base Costs (excluding OH & P)

TOTAL _____ (2A) x 0.075 = (3A)

4. General Contractor Self-Performed Work

<u>Work Item</u>	<u>Base Cost</u>	+	<u>12% OH & P</u>	=	<u>Total</u>
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
TOTAL					<input type="text"/> (4A)

5. Bond, Insurance, Sales Tax

- (a) 2B + 3A + 4A = _____ (5A)
- (b) Bond Markup: (5A) x _____ = _____ (5B)
- (c) Insurance Markup: (5A + 5B) x _____ = _____ (5C)
- (d) Sales Tax Markup: (5A + 5B + 5C) x 0.05395 = _____ (5D)
- (e) Extended General Conditions (if applicable) = _____ (5E)

TOTAL CHANGE ORDER REQUEST (5A + 5B + 5C + 5D + 5E) =

*Approved bond markup. **Approved insurance markup

SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

A. Definitions

1. "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and/or Phoenix Goodyear Airport, in accordance with the context of the contract.
2. "Contract" includes any and all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.
3. "Contractor" means every lessee, sublessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.
4. "Premises" means the leasehold or site occupied by Contractor pursuant to the lease, license or permit that is the subject of this Contract.

B. Assurances

1. Contractor will furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.
2. Contractor will charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement will be a material breach of this Contract for which the City of Phoenix will have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City of Phoenix or the United States, either or both of said Governments will have the right to judicially enforce said requirement.
3. Contractor warrants that no person will, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Contractor to the general public. Contractor further warrants that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age, or handicap.
4. As a part of the consideration for this Contract, Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations exist and may be amended from time-to-time.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

5. As a part of the consideration of the Contract, Contractor does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and that the contractor

will use the Premises in accordance with all other requirements imposed pursuant to 49 C.F.R. Part 21, as it may be amended.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

6. The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City of Phoenix will have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

7. Contractor agrees to insert the foregoing six provisions in any contract by which Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.

8. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

9. City of Phoenix reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations and additions.

10. The City of Phoenix reserves the right, but is in no way obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

11. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation or maintenance of the Airport. In the event that FAA or its successors require modifications or changes in the Contract as a condition to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications or changes as part of this Contract.

12. The Contract is subordinate to the reserved right of the City of Phoenix, its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight will include the right to cause in said airspace any noise inherent in the operation of any aircraft through said airspace or in landing at or taking off from, or operation on an Airport.

13. Contractor agrees to comply with the notification and review requirements as required by Title 14 of the Code of Federal Regulations, 14 CFR Part 77- Objects Affecting Navigable Airspace, in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Contractor will submit the required FAA Form 7460-1— Notice of Proposed Construction or Alteration—and provide documentation showing compliance with the federal requirements. Once the FAA has completed the aeronautical study, Contractor will provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation for: (1) Phoenix Sky Harbor International Airport, 1,133 feet; (2) Phoenix Goodyear Airport, 968 feet; (3)

Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Contractor.

14. Contractor, by accepting this Contract, covenants for itself, its successors and assigns that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Contractor.

15. Contractor acknowledges that nothing contained in this Contract will be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §40103(e).

16. This Contract and all the provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

17. If the Contract involves construction, the contractor will carry out the project in accordance with FAA airport design, construction and equipment standards and specifications current on the date of project approval.

18. Contractor is encouraged to use fuel and energy conservation practices.

C. City of Phoenix Equal Employment Opportunity Requirement

Refer to Information for Bidders, Equal Employment Opportunity Requirement, Page I.F.B - 14.

D. Immigration Reform and Control Act of 1986 (IRCA)

Contractor understands and acknowledges the applicability of the IRCA to it. Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify such compliance.

E. Conflict of Interest

Contractor acknowledges that the terms and conditions of Arizona Revised Statutes §38-511 are incorporated into this Contract.

F. Legal Worker Requirements

Refer to Information for Bidders, Page I.F.B - 6.

G. Disadvantaged Business Enterprise Requirements

Refer to Information for Bidders, Pages D.B.E.C. - 1 to 9.

H. No Boycott Provision

Refer to Information for Bidders, Page I.F.B - 17.

SPECIAL PROVISIONS

PHOENIX GOODYEAR AIRPORT

ITEM M-003 AIRPORT SAFETY AND SECURITY

DESCRIPTION

003-1.1 GENERAL. The Contractor shall carry out his operations in a manner that will cause a minimum of interference with air traffic, and shall cooperate with the FAA, the City, the Phoenix Goodyear Airport (GYR) tenants, flight schools and Fixed Base Operators, and other contractors working in the area.

All work shall be completed in accordance with the Construction Safety and Phasing Plan (CSSP) adopted for the project, the Contractor prepared Safety Plan Compliance Document (SPCD), FAA Advisory Circular 150/5370-2F or current series, and the City of Phoenix Department of Aviation's Airport Construction Safety Manual and the Supplementary Conditions, Special Provisions and Technical Specifications of these Contract Documents.

Phasing of the work will be necessary to minimize impacts on airport operations during construction. The GYR priorities for phasing of the work are shown in the CSPP Appendix E, Exhibit B.

Runway 3/21 will be closed when working in the Runway Safety Area (RSA). Construction within the RSA shall take place during night time airport closures between 2100 hours and 0600 hours Sunday through Thursday nights. The airport operations personnel will provide "Lighted X's" to mark all runway closures in accordance with the provisions of the CSPP and the Construction Contract Documents. **All work within the Runway Safety Area will require that the runway be closed.**

The preparation of a Safety Plan Compliance Document (SPCD) by the Contractor to indicate how it will comply with the CSPP, the project Supplementary Conditions, Special Provisions and Civil Technical Specification M-003 Airport Safety and Security is included in the Contractor's scope of work.

Any conflicts between the CSSP, the Contract Documents and M-003 Airport Safety and Security shall be reported to the Aviation Department Project Manager, GYR Aviation Supervisor and the Engineer of Record for resolution. Until resolved, the Contractor shall comply with the most stringent requirement.

The Contractor shall hold weekly airfield coordination meetings with GYR Airport Operations. Additionally, the Contractor shall meet with Airport Operations prior to the start of each shift to discuss the day's anticipated work activities.

All vehicles shall have flashing amber lights in accordance with the CSSP and Item M-003. All vehicles shall be required to have the headlights and flashing amber lights on at all times while on the airfield.

The Contractor shall be required to supply, place, maintain, move and store the items listed herein, as appropriate, to facilitate construction and protect air traffic. The Contractor shall keep on site an adequate extra supply of these items.

MATERIALS

003-2.1 RED WARNING LIGHTS. Red warning lights shall be flashing lights meeting the requirements of the "Manual on Uniform Traffic Control Devices for Streets and Highways" for Type A and Type B flashers or as shown in the *Airport Construction Safety Manual*. All warning lights used on the airfield shall be RED only.

003-2.2 WARNING MARKERS. (For use on roadways and service roads only) Warning markers shall be the type and size detailed on the plans or shown in the CSSP. Markers shall be equipped with a red warning light per paragraph 003-2.1.

003-2.3 TEMPORARY RUNWAY/TAXIWAY CLOSED DEVICES AND SYMBOL. The airport operations personnel will provide "Lighted X's" to mark all runway closures. The closed devices shall be portable lighted "X", SWEEPSTER Model LX Runway Closure Marker conforming to FAA AC 150/5345-55A *Specification for L-893 Lighted Visual Aid to Indicate Temporary Runway Closure* or approved equal.

All other temporary closure symbols, including vinyl "X's", shall be painted or applied on the pavement surface in accordance with the CSSP, plans and Civil Technical Specification Item P-620.

003-2.4 LOW AND MEDIUM LEVEL BARRIER SYSTEMS. Medium and low-level barriers shall be the Airport Runway Safety Barricade Model AR-1 and AR-2 Multi-Barrier as manufactured by Off The Wall Products, LLC, or approved equal. The AR-1 barrier medium level sections shall be eight (8) feet long and two (2) feet high and the AR-2 low level barrier sections shall be eight (8) feet long and ten (10) inches high and shall have reflective sheeting on the side facing the active airfield. Both sections shall be interlocking and shall be ballasted with water to prevent damage from jet blast. Each barricade section shall be equipped with a Model: SL-H867R Solar Powered Safety lights as manufactured by Leotek Electronics USA Corp., or approved equal. The barriers shall be furnished, maintained and relocated during each phase by the Contractor, and at the completion of the Contract they shall become property of the City.

003-2.5 VACUUM SWEEPER. Vacuum Sweeper shall be Tymco, Model HSP-600 or Elgin Model Crosswind, or approved equal. A sweeper and operator shall be available at all times during construction activities.

003-2.6 SAFETY AREA SUPPORT. Reinforced structural steel plates, precast slabs or other approved material necessary to cover open excavation in the Runway Safety Area shall conform to Paragraph 003-5.1(1)(c)(i). Excavations that cannot be covered to provide the required protection shall be backfilled.

003-2.7 SECURITY CHECK POINTS AND CONTROLLED CROSSINGS. Provide as shown on the plans, in the CSPP, in Appendix A of the SPCD, and as detailed within this specification, the items necessary to control access to the Air Operations Area (AOA) through Entry Gate #2 and control crossings at active taxiways. These items include, but are not limited to the following:

- 1) Flaggers equipped for day time and night time operations;

- 2) Marking, symbols, barrier systems and warning markers in accordance with the CSPP and this specification;

RESPONSIBILITIES

003-3.1 CONTROL REQUIREMENTS. The Contractor's responsibilities for work areas are as follows:

- 1) The Contractor shall be held responsible for controlling his employees, subcontractors, and their employees with regard to traffic movement. The Contractor is required to submit a Safety Plan Compliance Document (SPCD) to indicate how he/she will comply with the Construction Safety and Phasing Plan (CSPP) and how he/she will safely operate within the AOA. This SPCD shall conform to Chapter 2, Safety Plans, *Operational Safety on Airports During Construction*, AC 150/5370-2F and the Aviation Department Airport Construction Safety Manual, June 2006. It shall be submitted and approved by the Airside Operations Manager before the commencement of any construction. Information needed for preparation of the SPCD is located in AC 150/5370-2F, the CSSP and at the end of this section.
- 2) The Contractor shall rebuild, repair, restore, and make good at his own expense all injuries or damages to any portion of the work occasioned by his use of these facilities before completion and acceptance of his work.
- 3) The Contractor shall submit to the Engineer in writing a detailed work plan for each construction phase. The work plan shall include, but not be limited to, paving sequence, marking sequence, maintenance of airfield electrical and NAVAID power and control circuits. This plan shall be submitted 14 calendar days prior to the start of each construction phase. No work within the construction phase may commence until the phase work plan is approved.
- 4) The Contractor shall submit to the Engineer in writing a plan, by construction phase, for controlling construction equipment and vehicular movements, including material haul roads, in the Air Operations Area (AOA). This plan shall be submitted at the Pre-Construction Meeting and prior to each construction phase. No work may commence until this plan is approved by GYR Airport Operations. The plan must include material haul roads.
- 5) The Contractor shall provide a responsible Traffic Manager whose duty shall be to direct all traffic on or near active runways, taxiways, haul roads, and highways. **Paved surfaces shall be kept clear at all times and specifically must be kept free from all Foreign Object Debris (FOD) which might damage aircraft.**
- 6) The Contractor shall prepare a security badge control plan for review by Airport Operations. The plan shall be submitted prior to or at the Pre-Construction Meeting. No work may commence until this plan is approved. The plan shall be prepared on the Contractor's company letterhead and signed by the company representative who is authorized to sign the badge applications. The plan shall describe in detail the Contractor's and/or subcontractor's plan to control badges.
- 7) The Contractor shall ensure that no personnel or equipment enters the active movement areas or their associated Object Free Areas without the appropriate

Airport Operations escort. Access into movement areas or Object Free Areas without an Airport Operations escort is prohibited!

- 8) The Contractor will be required to coordinate his work so as to satisfy clearance requirements for arrival and departure of aircraft in compliance with the CSSP.

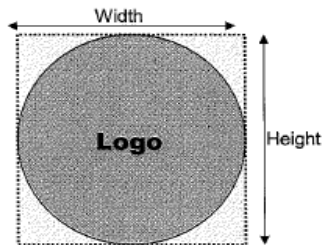
003-3.2 VEHICLE AND PEDESTRIAN CONTROL. Vehicle and access routes for airport construction shall be controlled as necessary to prevent inadvertent or unauthorized entry of persons, vehicles or animals onto Air Operation areas. No vehicle shall enter the AOA except at predetermined locations. The amount of construction traffic will require a flag person to control traffic crossing taxiways and other aircraft movement areas. Contractor personnel who operate vehicles in the AOA shall comply with the Airport Operations rules and regulations for vehicle marking, lighting, and operation. Failure to comply may result in contract non-compliance costs and Notice of Violation assessments, per paragraph 003-3.10.

003-3.3 CONTROL AND WARNING DEVICES. During construction operations near active taxiways or runways the Contractor shall furnish and maintain medium and low level barricades equipped with red warning lights along the edges of the runway and taxiway safety areas to warn construction equipment to stay clear of the active airfield pavement as well as warn pilots of areas having construction hazards. Per paragraph 003-2.4 barricades shall be equipped with red lights acceptable to the Airport Operations. The Contractor shall furnish and maintain warning markers with red warning lights along the edges of the runway safety area as designated and detailed on the plans. The Contractor shall maintain red warning lights and warning flags around all equipment, stockpiles, or other areas as directed by the Engineer and Airport Operations.

The Contractor shall provide the phone numbers of five (5) of its responsible personnel, including the project superintendent, and three (3) each responsible personnel, from the paving and safety subcontractors, each of whom may be contacted in an emergency. Personnel shall be on call 24 hours per day for maintaining construction hazard lighting and barricades. The Contractor shall employ watchmen to maintain and service all traffic control equipment. The project superintendent, foreman and on-site manager for the Contractor and all subcontractors shall have cell phones with a "602", "480" or "623" area code.

003-3.4 VEHICLE MARKING AND IDENTIFICATION. All permitted vehicles operating in the AOA shall display in full view above the vehicle a 3' x 3' or larger, orange and white checkerboard flag, each checkerboard color being 1' square. Any vehicle operating on the AOA shall be equipped with a flashing amber dome-type light, mounted on top of the vehicle and of such intensity to conform to local codes for maintenance and emergency vehicles. All vehicles operating within the airfield boundary which are approved for unescorted access shall be identified with a painted or magnetic sign on each side of the vehicle bearing the name and logo of the company. The sign shall conform to the requirements below:

City of Phoenix – Aviation Department
*Company Identification for Vehicles
entering the Restricted Area*



Logo Only

If using a logo only on each side of the vehicle it must be greater than 12 inches in diameter or the 'width' multiplied by the 'height' must be greater than 144 square inches.

or

Logo and Letters

The width of the logo plus the letters

(measured from one side of the logo to the opposite end of the letters)

multiplied by

the height of the highest point

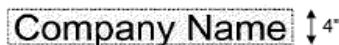
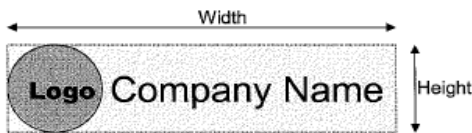
(measured from the bottom of the lowest point of the logo plus company name to the highest point of the logo and company name)

must be greater than 144 square inches

or

Lettering Only

The letters must be 4" or greater



Rented or leased vehicles cannot be granted unescorted access unless the above signage is placed on it. All vehicles with unescorted access must have available for inspection, when entering the Restricted area or while in the Restricted area, the current registration and proof of insurance for the vehicle.

Vehicles making only occasional visits to the job site are exempt from the identification requirements contained above provided that the Airside Operations Manager is notified and a properly identified vehicle escorts them into, through, and out of the airport secured area. These and other vehicles needing intermittent identification may be marked with tape or with magnetically attached markers that are commercially available to meet identification size and content requirements.

003-3.5 VEHICLE TRAFFIC AND OPERATIONS. When any vehicle other than those approved for use in the AOA is required to travel to or from the work area or over any portion of the work area, shall be escorted by a vehicle properly identified to operate in the area and be provided with a flag on a staff attached to the vehicle. All construction vehicles/equipment shall have automatic signaling devices to sound an alarm when moving in reverse. All equipment shall be operated within the approved speed limits.

All vehicles and/or construction equipment operating inside the active AOA, but outside of the designated haul roads, shall be escorted by Airport Operations, who will maintain radio contact with the ATCT. Crossing the active runway shall not be permitted. Vehicular traffic routes which need to cross an active taxiway shall be coordinated in advance (at least 72 hours) with Airport Operations to ensure that proper Notices to Airmen (NOTAMs) are in place. These prearranged traffic routes must be controlled by flag-persons as detailed on the plans. Aircraft **always** have the right-of-way. Construction equipment shall **always** yield to aircraft. Construction vehicle traffic shall **never** cross an active taxiway unless escorted by Airport Operations or at the pre-approved crossing points while crossing guards are stationed.

At such a pre-approved taxiway crossing point, the Contractor shall have a flag-person stationed on each side of the crossing point to monitor aircraft movement and to direct construction traffic. The flag-person shall be equipped with handheld signs or flags to assist in directing construction traffic. For nighttime construction operations, the flag-person shall also be equipped with lighted wands and light plants on each side of the taxiway. In addition, one vacuum sweeper and one water truck shall be dedicated to and stationed full time at each active taxiway crossing to maintain the surface of the taxiway free from construction traffic debris. Mud and other material tracked onto taxiway surfaces shall be removed by hand if necessary to achieve its complete removal.

Prior to entering any work site within the AOA, the Contractor will physically meet with Airport Operations to brief each other on the intended activities. The Contractor must also arrange a physical inspection of the work area with Airport Operations prior to leaving any area that has been closed for work, or that has been used for a crossing point or haul route by the Contractor.

003-3.6 VEHICLE PARKING. All vehicles shall be parked and serviced in the designated staging and employee parking areas shown on the plans. The Contractor is responsible for transporting his/her employees from these areas to the jobsite.

003-3.7 RADIO COMMUNICATIONS. The control of vehicular activity on the AOA is of the highest importance. This requires coordination with airport users and Air Traffic Control Tower (ATCT). The Contractor shall have no direct contact with the ATCT. All communications with the ATCT shall be coordinated through Airport Operations. However, the Contractor shall properly train his/her personnel, particularly flag-persons, on the proper procedures for monitoring radio frequencies.

003-3.8 AIRPORT SECURITY REQUIREMENTS. The airport is operated in strict compliance with Federal, State and local rules and regulations, which prohibits unauthorized persons or vehicles in the AOA. Equipment and personnel will be restricted to the work areas defined on the plans. Any violations by Contractor's personnel will subject the Contractor to the contract non-compliance assessments imposed by the Aviation Department.

Airport restricted areas are fenced and must remain fenced at all times. No temporary airport perimeter security fencing is required for this project. If, as the project progress, any temporary security fences and/or gates are required they shall be constructed by the Contractor according to specifications set by Airport Operations. The temporary fence and gate must be approved by Airport Operations before any of the regulated perimeter security fence may be altered. If needed, temporary fencing shall be constructed in accordance with FAA Specification F-162. The gates will remain closed and locked, or if used continuously for ingress and egress, the Contractor will provide approved guards trained by Airport Operations to monitor access to the Airport. The Contractor shall provide guards with a roster of his personnel and ensure that each individual has adequate identification. Contractor locks are not permitted on any airport gate. Gates will be staffed during shift working hours and will be secured when there is no activity at that location. The Contractor will be responsible for a 24-hour advance notification to Airport Operations regarding the scheduling of the use of the various security check point gates. There will be a communications system for emergency responses, security breaches, etc.

Entrance to the airfield is subject to strict security regulations. All vehicles must meet minimum identification requirements and have proof of insurance on file with GYR Airport Operations.

The Contractor shall maintain the security integrity between the public and AOA. All barrier designs and their phasing shall be submitted to the Aviation Department and approved by them in writing prior to erection.

Construction personnel should wear company identification (company badge, shirt, hat, etc. which include the company logo) at all times, subject to the approval by the GYR Operations.

The Contractor shall restrict passage into the Airport Operations Area to badged persons, vehicles and equipment displaying his identification or that of the Airport. Should the Contractor wish to allow visitors, vendors or delivery through his access point, he shall provide an escort in accordance with escort procedures.

The Contractor shall be responsible to provide at his own cost a badged escort for all vehicles that do not operate on a daily basis within the AOA. Escorted vehicles shall not be left unattended. The badged escort shall remain with the escorted vehicle at all times while on the AOA and shall be escorted back and forth to the point of entry. There will be no exceptions to this requirement.

The Contractor is required to submit a plan on how he/she will safely operate within the AOA. This plan shall be submitted and approved by the GYR Airport Operations Manager before the commencement of any construction. The Contractor is required to prepare, submit for approval and maintain during construction a plan for managing Airport Access Cards for his/her employees, subcontractors or any other party recommended by the Contractor for badging. This plan shall be submitted to Airport Operations prior to the Pre-Construction Meeting.

The Contractor will contact Airport Operations, telephone (623) 932-4550 (10) days prior to start of construction to submit the necessary airport security information for all vehicles and personnel required inside the restricted area during construction.

003-3.9 VIOLATION OF RESPONSIBILITIES. Any violation of 003-3.1 - 003-3.8 shall be considered a violation of the Contract itself and shall be sufficient cause for halting the work without extending the time limit of the job.

003-3.10 CONTRACT NON-COMPLIANCE ASSESSMENTS. Due to both the safety and security precautions necessary at Phoenix Goodyear Airport, failure of the Contractor to adhere to the prescribed requirements/regulations has consequences that may jeopardize the health, welfare and lives of the customers and employees at Phoenix Goodyear Airport, as well as the Contractor's own employees. Therefore, if the Contractor is found to be in non-compliance with the security, Access Card issuance and airfield safety requirements by either Airport Operation's Personnel or the Engineer or his representatives, Phoenix Goodyear Airport will issue Notices of Violation (NOV).

The Contractor may appeal the NOV; however appeals must be made in writing, and within four (4) calendar days of the offending incident, to the Airport Manager. The appeal would need to state, in sufficient detail, why the NOV/circumstances are unwarranted. A final and binding decision on the appeal will be made by the Airport Manager within ten (10) working days of receipt of the appeal. The Contractor will then be notified of this decision in writing. No further appeals to the specific NOV will be considered or accepted.

The penalty could range from temporary or permanent loss of driving privileges, revocation of access card and non-compliance assessments in accordance with Table 1 – Schedule of Contract Non-Compliance Assessment for Notice of Violation listed below and the applicable

amount will be withheld from the Contractor's next monthly payment application following the date of the violation. The Prime Contractor will be held financially responsible for all NOV's issued to their subcontractors or associated with this Contract.

**TABLE 1 – Schedule of Contract Non-Compliance Assessment
For Notice of Violation**

Description of Assessment	First Offense	Second Offense	Third Offense
Not having proper and current Airport Security Badge or not properly displaying Airport Security Badge.	\$1,000.00	\$5,000.00	\$15,000.00
Lost or unreturned Airport Security Badge.	\$300.00	\$450.00	\$600.00
Un-authorized access to AOA by construction personnel or access through construction gate by un-authorized personnel.	\$1,000.00	\$5,000.00	\$15,000.00
Failure to Escort / be Escorted.	\$1,000.00	\$5,000.00	\$15,000.00
Operating a vehicle or mobile construction equipment without a current Ramp Driver's permit.	\$1,000.00	\$5,000.00	\$15,000.00
Failure to stop at a designated Stop, or exceeding the maximum speed limit, or deviating from designated service roadway or haul routes.	\$1,000.00	\$5,000.00	\$15,000.00
Failure to yield to airside personnel or vehicles.	\$1,000.00	\$5,000.00	\$15,000.00
No logo on vehicle or logo is not Correct in name and dimension.	\$1,000.00	\$5,000.00	\$15,000.00
Active runway incursion.	\$15,000.00	\$20,000.00	\$25,000.00
Active taxiway, taxilane or apron incursion.	\$10,000.00	\$15,000.00	\$20,000.00
Active runway or taxiway object free area incursion.	\$5,000.00	\$10,000.00	\$15,000.00
Safety violation, such as insufficient barricades, or no flags or amber beacons on vehicle or equipment. Or no red obstruction lighting on cement silo, batch plants, cranes or other equipment with significant height.	\$5,000.00	\$10,000.00	\$15,000.00
Non-compliance with City's lock- Out tag-out procedures.	\$5,000.00	\$10,000.00	\$15,000.00
Failure to backfill open trenches within time specified.	\$5,000.00	\$10,000.00	\$15,000.00
Failure to provide lighted barricades.	\$5,000.00	\$10,000.00	\$15,000.00
Failure to provide functional temporary edge Lighting.	\$5,000.00	\$10,000.00	\$15,000.00
All other NOV not listed above. \$1,000.00	\$1,000.00	\$5,000.00	\$15,000.00

The Phoenix Goodyear Airport Operations has the option to issue warnings on the first offense if the incident justifies it. Individuals involved in a non-compliance violation may be required to surrender their access control card and be escorted off the AOA pending investigations of the matter and the outcome of the possible appeal.

Incursions are defined as “any entrance onto an active runway, taxiway, taxilane or apron that may or may not subject any aircraft or crash fire rescue vehicle to yield, stop or change direction to avoid the sudden entrance.”

The fourth and each subsequent offence for any of the NOV listed above, the contract non-compliance assessment shall remain at the same amount shown for the third offence. Advancing from the first offence to the second offence, or from the second offence to the third offence, etc., shall be considered whether the individual is employed with the prime Contractor or any subcontractor or material supplier.

The above listed NOV Contract Non-Compliance Assessment schedule supersedes the assessment schedule as published in the City of Phoenix Aviation Department's Airport Construction and Safety Manual.

COORDINATION OF CONSTRUCTION ACTIVITIES

003-4.1 WORK SCHEDULING AND ACCOMPLISHMENT. The Contractor shall contact GYR Airport Operations each day before beginning work to coordinate the status and nature of work to be done that day. Access to work sites within the AOA will require daily coordination with Airport Operations prior to gaining access. The Contractor shall also report to Airport Operations at the end of each day to schedule the work he plans to do on the following day.

Violations of any coordination requirements shall be considered a violation of the Contract itself and shall be sufficient cause for halting the work without extending the time limit of the job.

SAFETY REQUIREMENTS

003-5.1 GENERAL. Before entering upon or crossing any runway or taxiway, or aircraft movement area, the Contractor shall receive proper clearance from GYR Airport Operations. Emergencies and operating conditions may necessitate sudden changes, both in airport operations and in the operations of the Contractor. Aircraft operations shall always have priority over any and all of the Contractor's operations. Should runways or taxiways be required for the use of aircraft and should Airport Operations deem the Contractor to be too close to active runways or taxiways the Contractor shall suspend his operations, remove his personnel, plant, equipment, and materials to a safe distance and stand by until the runways and taxiways are no longer required for use by aircraft. There will be no compensation for delays or inefficiencies due to these changes.

The Contractor shall ensure that no personnel or equipment enters into the active movement areas or their associated Object Free Area without the appropriate Airport Operations escort. **Access into movement areas or Object Free Areas without an Airport Operations escort is prohibited!**

Throughout the duration of the job, any practice or situation that Airport Operations or the Engineer determines to be unsafe or a hindrance to regular airport operations shall be immediately rectified.

Any violation of these or the following safety requirements shall be considered a violation of the Contract itself and shall be sufficient cause for halting the work without extending the time limit of the job.

- (1) The following publications contain definitions/descriptions of critical airport operating areas. The areas defined below pertain to airfield safety requirements and are referenced throughout the Contract Documents. Copies of Advisory Circulars may be found at the FAA website:

http://www.faa.gov/airports_airtraffic/airports/resources/advisory_circulars/

and, Federal Aviation Regulations (FARs) can be found at:

http://www.faa.gov/regulations_policies/faa_regulations.

- (a) Advisory Circular 150/5370-2F, "Operational Safety on Airports During Construction" Sets forth guidelines to assist airport operators in with the requirements of federally funded construction projects.
- (b) FAR Part 77, "Objects Affecting Navigable Airspace," Current Edition: Establishes standards for determining obstructions to navigable airspace. Civil airport imaginary surfaces are defined in the publication. It also sets forth requirements for notice of certain proposed construction or alteration. Notice of construction provides a basis for recommendations for identifying the construction or alteration in accordance with AC 70/7460-1, "Obstruction Marking and Lighting," Current Edition.
- (c) AC 150/5300-13A Change 1, "Airport Design" Current Edition: Establishes design, operational and maintenance standards for airports. Standard terms used in the contract plans and specifications are defined below:
 - (i) Runway Safety Area (RSA) - The defined surface surrounding the runway over which aircraft should, in dry weather, be able to cross at normal operating speeds without incurring significant damage. A safety area is graded, drained and compacted. It is free of any holes, trenches, humps or other significant surface variations or objects, other than those which must be there because of their essential aeronautical function. The safety area requires the capability of supporting maintenance, firefighting, and rescue vehicles under normal (dry) conditions.

Prior to re-opening the runway each morning, the RSA must comply with the following:

- 1) The area(s) shall be able to support an aircraft at normal operating speeds without the aircraft incurring significant damage.
- 2) For the first 200 feet beyond the runway ends, the longitudinal grade of the RSA is between 0 and 3 percent, with any slope being downward from the runway ends. For the remainder of the RSA, the maximum allowable downward grade is 5 percent and the maximum allowable upward grade shall not penetrate the 20:1 approach surface from the end of the runway, as defined in FAR Part 77. However, limitations on longitudinal grade changes are plus or minus 2 percent per 100 feet.
- 3) For the RSA during construction (200 feet from runway centerline and up to 200 feet from the runway ends), the transverse grade from the edge of the runway pavement is 1.5 to 5 percent downward. For areas beyond 200 feet from the runway ends, the maximum allowable transverse grade shall be 5%, upward or downward. Transverse grade changes should be warped smoothly.
- 4) The maximum permissible drop-off at the edge of the runway pavement is 3 inches.

- (ii) Object Free Area (OFA) – An area on the ground centered on a runway, taxiway, or taxilane centerline provided to enhance the safety of aircraft operations by having the area free of objects, except for objects that need to be located in the OFA for air navigations or aircraft ground maneuvering purposes.
- (iii) Obstacle Free Zone (OFZ) – The OFZ is the airspace below 150 feet above the established airport elevation and along the runway and extended runway centerline that is required to be clear of all objects, except for frangible visual NAVAIDs that need to be located in the OFZ because of their function, in order to provide clearance protection for aircraft landing or taking off from the runway, and for missed approaches. The OFZ is subdivided as follows:
 - 1) Runway OFZ. The airspace above a surface centered on the runway centerline.
 - 2) Inner-approach OFZ. The airspace above a surface centered on the extended runway centerline. It applies to runways with an approach lighting system.
 - 3) Inner-transitional OFZ. The airspace above the surfaces located on the outer edges of the runway OFZ and the inner-approach OFZ. It applies to runways with approach visibility minimums lower than $\frac{3}{4}$ -statute mile.
- (iv) Taxiway Safety Area (TSA) – A defined surface alongside the taxiway prepared or suitable for reducing the risk of damage to an airplane unintentionally departing the taxiway.
- (iv) The dimensioning of RSA's, OFA's and OFZ's are determined by the type of aircraft utilizing the runways and taxiways. AC 150/5300-13A provides detailed information for determining the required dimensioning for various safety areas. For the Phoenix Goodyear Airport, the following are the locations of Runway and Taxiway Safety Areas, Object Free Areas and Obstacle Free Zones.
 - (1) Runway 3/21: The RSA is 250 feet from each side of the runway centerline and extends 1,000 feet beyond each end of the runways. The OFA is 400 feet from each side of the runway centerline. The OFZ is 200 feet from each side of the runway centerline and beyond the ends of the runway
 - (2) Group IV aircraft is the Design Aircraft for Phoenix Goodyear Airport. However, much of the aircraft using airport are Group II or III aircraft. Workers and equipment are to provide 25' wingtip clearance during taxiing operations if Taxiway remains open to traffic. The TSA and OFA for the various groups of aircraft are:
 - Group II – 79' Wingspan
 - (a) TSA 39.5' from Taxiway Centerline
 - (b) OFA 65.5' from Taxiway Centerline
 - Group III – 118' Wingspan
 - (a) TSA 59' from Taxiway Centerline
 - (b) OFA 93' from Taxiway Centerline

Group IV – 171' Wingspan

- (a) TSA 85.5' from Taxiway Centerline
- (b) OFA 129.5' from Taxiway Centerline

- (5) The Contractor shall acquaint his supervisors and employees with the airport and operations that are inherent to Phoenix Goodyear Airport and shall conduct his/her construction activities to conform to all routine and emergency air traffic requirements and guidelines for safety specified herein. **The Contractor shall be responsible for providing all safety devices as required for the protection of his personnel.**
- (6) Protection of all persons shall be provided throughout the progress of the work. The work shall proceed in such a manner as to provide safe conditions for all workers and personnel. The sequence of operations shall be such that maximum protection is afforded to ensure that personnel and workers in the work area are not subject to any dangerous conditions. The Contractor must provide safety measures to guard against injury.
- (7) During the performance of this contract, the airport facility shall remain in use to the maximum extent possible. Use of areas near the Contractor's work will be controlled to minimize disturbance to the Airport's operation. The Contractor shall not allow employees, subcontractors, suppliers, or any other unauthorized person to enter or remain in any airport area which would be hazardous to persons.
- (8) All work to be performed which is too close to an active runway, taxiway or apron under operational conditions shall be performed when the runway, taxiway or apron is not in use. Such work shall not be accomplished without prior permission from Airport Operations. Requested closings shall be directed to the Airport Operations in writing at least 72 hours in advance so that the proper Notice-to-Airmen (NOTAM) may be issued. Only Airport Operations have the authority to open or close runways or taxiways.
- (9) The Contractor shall be aware of the following types of safety problems and/or hazards. These problems or hazards shall not be permitted. Should any of these problems or hazards arise during construction, the Contractor shall immediately rectify/correct the problem or hazard to the satisfaction of the Engineer and Airport Operations Personnel:
 - (a) Trenches, holes, or excavations on or adjacent to any open runway or in safety areas.
 - (b) Unmarked/unlighted holes or excavation in any apron, open taxiway, open taxilane, or related safety area.
 - (c) Mounds or piles of earth, construction materials, temporary structures, or other objects in the vicinity of any open runway, taxiway, taxilane, or in a related safety, approach, or departure area.
 - (d) Vehicles or equipment (whether operating or idle) on any open runway, taxiway, taxilane, or in any related safety, approach, or departure area.

- (e) Vehicles, equipment, excavations, stockpiles, or other materials which could degrade or otherwise interfere with electronic signals from radios or electronic navigational aids (NAVAIDS).
- (f) Runway surfacing projects resulting in excessive lips greater than 1 inch for runways and exceeding 3 inches for edges between the old shoulder and new surfaces at runway edges and ends.
- (g) Unmarked utility, NAVAID, weather service, runway lighting, or other power or signal cables that could be damaged during construction.
- (h) Objects (whether or not marked or flagged) or activities anywhere on or in the vicinity of the airport which could be distracting, confusing, or alarming to pilots during aircraft operations.
- (i) Unflagged/unlighted low visibility items (such as tall cranes, drills, and the like) anywhere in the vicinity of active runways, or in any approach or departure area.
- (j) Misleading or malfunctioning obstruction lights or unlighted/unmarked obstructions in an approach to any open runway.
- (k) Inadequate approach/departure surfaces needed to assure adequate landing/takeoff clearance over obstructions or work or storage areas.
- (l) Inadequate, confusing or misleading (to user pilots) marking/lighting of runways, taxiways, or taxilanes, including displaced or relocated thresholds.
- (m) Water, dirt, debris, or other transient accumulation which temporarily obscures pavement marking, pavement edges, or derogates visibility of runway/taxiway marking or lighting.
- (n) Inadequate or improper methods of marking, barricading, and lighting of temporarily closed portions of AOA.
- (o) Trash or other materials with foreign object damage (FOD) potential, whether on runways, taxiways, or aprons, or in related safety areas.
- (p) Inadequate barricading or other marking which is placed to separate construction or maintenance areas from open aircraft operating areas.
- (q) Failure to control vehicle and human access to open aircraft operating areas.
- (r) Construction/maintenance activities or materials which could hamper the response of aircraft rescue and firefighting (ARFF) equipment from reaching all aircraft or any part of the runway/taxiway system, runway approach and departure areas, and aircraft parking locations.
- (s) Bird attractants on airport, such as edibles (food scraps, etc.), miscellaneous trash, or ponded water.

- (10) The Contractor shall conduct activities so as not to violate any safety standards contained herein. The Contractor shall inspect all construction and storage areas as often as necessary and promptly take all steps needed to prevent/remedy any unsafe or potentially unsafe conditions/activities discovered.
- (11) Before actual commencement of construction activity, the Contractor shall notify Airport Operations and the Engineer in writing of his intentions to begin construction, stating the proposed time, date, and work area in order for the appropriate Notice-to-Airmen (NOTAM) to be issued. Only GYR Airport Operations have the authority to open or close runways or taxiways and to issue NOTAMs. In order to properly communicate these closures Airport Operation must receive these requests 72 hours prior to the scheduled closure. Upon completion of work and return of all related areas to standard conditions, the Contractor shall again notify Airport Operations and the Engineer in writing, and describe the area that is complete and available for normal airport operations.
- (12) Debris. Debris, waste and loose material or any other FOD (including dust and dirt) capable of causing damage to aircraft landing gear, propellers or being ingested in jet engines shall not be allowed on active aircraft movement areas or adjacent infield areas. Materials observed to be within these areas shall be removed immediately and/or continuously by the Contractor. The Contractor shall be required to have a sweeping machine and operator on site, ready at all times during construction activity. Where travel on or across runways, ramp areas, taxiways, or aircraft aprons is required, the Contractor shall provide adequate personnel and equipment to keep such surfaces clear of debris at the discretion of the Engineer. Closed pavements shall be swept clean prior to reopening to aircraft traffic. Exposed earth in excavation areas within 75 feet of the centerline immediately adjacent to active taxiways shall be covered to prevent dust from jet blast. Cover material shall be weighted to prevent movement from jet blast.
- (13) Flag persons. In accordance with the specifications, the Contractor shall furnish, at his own expense, flag persons as necessary to control his traffic unless otherwise directed by the Engineer.
- (14) Trenches, Excavations and Stockpiled Material. Open trenches or excavations exceeding 3" in depth and 3" in width or stockpiled material will not be permitted within the limits of restricted areas of operational runways or taxiways. Covering for open trenches or excavations shall be of sufficient strength to support the weight of the heaviest aircraft operating on the runway or taxiway. Trenches and excavations that cannot be protected by covering shall be backfilled, and re-excavated if necessary at the end of each day or before opening the restricted area to operational use of the runway or taxiway. Open storm drain trenches, electrical duct or conduit trenches, utility trenches or any other trench shall be limited to 500-foot accumulative in length at any time. Open trenches in the runway safety area shall be properly and completely backfilled and compacted in sufficient time before the end of the work shift.
- (15) Construction in Proximity to Active Runways and Taxiways.

Runway Sides: If appropriate construction/maintenance NOTAM has been issued, construction is permissible as close as 250 feet from the centerline of the active runway provided that all Airport Operations and FAA criteria are met. The 250 feet

shall be clearly marked in the infield areas with approved barricades at 10-foot intervals. Runway Ends: No work will be permitted within 1,000 feet of the active runway threshold.

Taxiway Sides: If appropriate construction/maintenance NOTAM has been issued, construction is permissible as close as the dimensions shown on the Construction Safety and Phasing Plan (CSPP) provided that all Airport Operations and FAA criteria are met. This dimension(s) shall be clearly marked in the infield areas using approved barricades at 10-foot intervals. Personnel and equipment working within taxiway Object Free Areas (OFA) must at all times be able to give way to taxiing aircraft.

(16) Equipment Height Restrictions.

Maximum permissible equipment height varies by location and by construction phase. Maximum equipment height requirements are shown in the CSPP and shall not be exceeded unless prior approval is obtained from the Engineer and Airport Operations. Atop all equipment booms shall be mounted the white and orange checkered flag described in Paragraph 003-3.4. The top ten feet (10') of these booms shall be painted fluorescent orange and they shall be equipped with a red obstruction light. Any crane erections shall be coordinated with Airport Operations and the Engineer during every shift.

(17) Miscellaneous.

- (a) Open flame, welding or torch cutting are prohibited unless adequate fire and safety precautions have been taken and the procedure has been approved by the Engineer.
- (b) All materials and equipment when not in use shall be placed in approved areas where they will not constitute a hazard to aircraft and not penetrate clearance height restrictions as shown in the CSPP. All equipment shall be parked in the appropriate area(s) when not in use.
- (c) The Contractor shall provide the Safety/Security Manager with a current list of all employees working on the airport. The list shall be maintained current by the Contractor and Subcontractors.
- (d) For emergencies involving life safety (injuries, fires, security breaches, etc.), the Contractor shall immediately call 602-273-3311, the Sky Harbor Emergency number, and simultaneously or as soon as possible contact Airport Operations followed by notification to the Engineer.

003-5.2 CLOSED RUNWAY AND TAXIWAY MARKING AND LIGHTING. Closed runway and taxiway markings shall be as shown in the CSPP. Closed runway and taxiway marking and lighting materials shall be approved for use by the Engineer prior to placement. Construction activities shall not begin until the layout of such marking and lighting has been approved by the Engineer.

003-5.3 HAZARD MARKING. Hazard-marking barricades, flashers, etc. should be used: to identify and define the limits of construction making them visible to aircraft, personnel, or vehicles; to identify hazards such as open manholes, small areas under repair, stockpiled

material, waste areas, etc.; to prevent aircraft from taxiing onto a closed runway for takeoff; and to identify FAA, airport, and National Weather Service facilities, cables, power lines and other sensitive areas to prevent damage, interference, and facility shutdown.

Traffic Cones shall not be used at any time on the Air Operations Area.

Hazardous areas, in which no part of an aircraft may enter, should be indicated by the use of barricades marked with diagonal, alternating orange and white reflective stripes. During reduced visibility or night hours, the barricades should be supplemented with flashing red lights. The intensity of the lights and spacing for barricades, flags, and lights should be adequate to delineate the hazardous area without ambiguity. The Contractor shall have a designated person on call 24 hours a day for emergency maintenance of airport hazard lighting and barricades.

003-5.4 CONSTRUCTION AREA MARKING AND LIGHTING. Low profile lights, retroreflective taxiway edge markers, low level barriers, and warning flags shall be provided and erected by the Contractor as shown in the CSPP or as directed by the Engineer. All construction areas, including closed runways and taxiways, should be clearly and visibly separated from active air operation areas. Hazard areas, facilities, cables, and power lines should also be clearly identified by the Contractor. The Contractor is responsible for maintaining the condition and visibility of all markers identifying above-mentioned areas and that marking and lighting aids remain in place. Appropriate barriers, lights and signs should be used as necessary to clearly separate all construction/maintenance areas from other parts of the AOA. All barricades, temporary markers, flag line supports, and other objects placed and left in safety areas on any open runway, taxiway, or taxilane should be: as low as possible to the ground; of low mass; easily collapsible upon contact with an aircraft or any of its components; weighted down or sturdily attached to the surface to prevent displacement from prop wash, jet blast, wing vortex, or other surface wind currents; and if affixed to the surface, frangible at ground level.

003-5.5 CONSTRUCTION NEAR NAVIGATIONAL AIDS. Construction materials and equipment shall not be placed or parked where they may interfere with the line-of-sight of the ATCT and navigational aids in operation. GYR Operations shall determine if any materials or equipment will cause any type of interference.

003-5.6 CONSTRUCTION SITE ACCESS AND HAUL ROADS. The Contractor will not be permitted to use any access or haul roads other than those designated on the contract drawings. The Contractor should submit specific proposed ingress and egress routes associated with specific construction activities to the Engineer for evaluation and approval prior to commencing construction activities. Aircraft Rescue and Firefighting (ARFF) right-of-way on access roads, haul roads, taxiways, and runways shall not be impeded at any time.

003-5.7 TRENCHES AND EXCAVATIONS. Gaps or holes between paving lanes, open trenches or excavations are not permitted within an operational runway safety area. Coverings for open trenches or excavations such as reinforced structural steel plates, precast slabs or other methods should be of sufficient strength to meet the requirements of the RSA found in Paragraph 003-5.1(1)(c). Open trenches and excavations at the construction site outside of the RSA should be prominently marked with red or orange flags, as approved by the Engineer, and lighted with red light units during hours of restricted visibility or darkness.

Excavations and open trenches may be permitted up to the edge of structural taxiways provided the drop-off is adequately signed, marked, and lighted and the appropriate NOTAM is issued.

003-5.8 CONSTRUCTION MATERIALS STOCKPILING AND EQUIPMENT STORAGE.

There shall not be any equipment storage in the active runway and active taxiway safety areas or in the infield areas. The Contractor shall remove pavers and other equipment from the active Runway and Taxiway Object Free Areas (OFA) including the infields (staging on apron areas will be allowed with prior approval) before re-opening the runway or taxiway. Stockpiled material or equipment should not be stored near aircraft turning areas or operational movement areas, aprons, or excavations and trenches. Stockpiled materials shall not be stored near NAVAIDs, visual or approach aids, nor shall they obstruct the ATCT's line of sight to any runway or taxiway. The Contractor shall ensure that stockpiled construction materials and equipment do not cause degraded or hazardous conditions to airport operations safety. This includes determining and verifying that stockpiled materials and equipment are stored or parked at an approved location, that they are properly stowed to prevent foreign object debris (FOD), attraction by wildlife, or obstruction of air operations either by their proximity to NAVAIDs or to aircraft movement areas.

003-5.9 OTHER LIMITATIONS ON CONSTRUCTION. Open flame welding or torch cutting operations are prohibited unless adequate fire and safety precautions are provided and have been approved for use by the Engineer. Under no circumstances should flare pots be used near aircraft turning areas.

003-5.10 FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT. Waste and loose materials capable of causing damage to aircraft landing gear or propellers or capable of being ingested in jet engines should not be left or placed on or near active aircraft movement areas. Materials tracked onto these areas should be continuously removed during the construction project. It is also recommended that waste or loose materials which would attract wildlife be carefully controlled and removed on a continuous basis.

A minimum of one (1) operational vacuum sweepers and operators, and one (1) 4M-water trucks with operators, shall be on-site and operating while the Contractor and/or any subcontractor is working.

003-5.11 RUNWAYS AND TAXIWAYS. Nothing shall be placed upon runways, taxiways, taxilanes, or aprons without authorization from Airport Operations.

003-6.1 CONTRACTOR QUALITY CONTROL. The Contractor shall be responsible for developing and implementing a Safety Plan Compliance Document including inspections necessary to assure compliance with the requirements of this section and the approved Construction Safety and Phasing Plan.

METHOD OF MEASUREMENT

003-7.1 All items specified in this section will be measured as one lump sum.

003-7.2 Measurement and payment for "Landside Traffic Control" and for Uniform Off-Duty Officer as specified in Section III-2 Technical Special Provision Section 1.1 is incidental to Item M-003 Airport Safety and Security.

BASIS OF PAYMENT

003-8.1 Airport safety and security shall be paid for at the contract lump sum price in a proportionate manner, on the basis of current estimates. This price shall constitute full compensation for furnishing material and equipment, including but not limited to flagpersons, temporary gates, warning markers, temporary drainage items, low level barriers, other traffic control devices and necessary equipment, safety area support material, and other material and equipment list herein, and the maintenance thereof and all other labor, materials, equipment, tools and incidentals including Landside Traffic Control and Uniform off-duty Officers necessary to accomplish this item.

Payment will be made under:

Item M-003-8.1 Airport Safety and Security – per lump sum

END ITEM M-003

**EXHIBIT I – FEDERAL CONTRACT PROVISIONS
FOR AIRPORT IMPROVEMENT PROGRAM CONSTRUCTION PROJECTS**

	Provision	Page	Attachment
I.	Buy American Preferences – 49 U.S.C. Chapter 501 (§§ 50101 – 50105) <ul style="list-style-type: none"> • Federal Register Notice to Manufacturers of Alternative Fuel Vans • Federal Register Notice to Manufacturers of Airfield Lighting and Navigation Aid Equipment • Federal Register Notice to Manufacturers of Airport Avian Radar Systems • Federal Register Notice to Manufacturers of Airport In-Pavement Stationary Runway Weather Information Systems • Federal Register Notice to Manufacturers of Foreign Object Debris (FOD) Detection Equipment 	F.R. - 2	Attachment 1 (Page F.R. 44– 46)
II.	Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements – 49 C.F.R. Part 21	F.R. - 2	
III.	Airport and Airway Improvement Act of 1982 – General Civil Rights Provisions – 49 U.S.C. § 47123	F.R. - 3	
IV.	Lobbying and Influencing Federal Employees – 49 C.F.R. Part 20	F.R. - 3	Attachment 2 (Page F.R. – 47)
V.	Access to and Retention of Books and Records – 49 C.F.R. § 18.36(i)(7), (10), (11)	F.R. - 3	
VI.	Disadvantaged Business Enterprises – 49 C.F.R. Part 26	F.R. - 3	
VII.	Energy Conservation Requirements – 49 C.F.R. § 18.36(i)(13)	F.R. - 3	
VIII.	Breach of Contract Terms – 49 C.F.R. § 18.36(i)(1)	F.R. - 4	
IX.	Rights to Data, Copyrights, and Patents – 49 C.F.R. § 18.36(i)(8), (9)	F.R. - 4	Attachment 3 (Page F.R. – 48)
X.	Trade Restriction Certification – 49 C.F.R. § 30.13(b)	F.R. - 4	Attachment 4 (Page F.R. – 49)
XI.	Restrictions on Federal Public Works Projects – 49 C.F.R. § 30.15	F.R. - 4	Attachment 5 (Page F.R. 50– 51)
XII.	Veterans’ Preference – 49 U.S.C. § 47112	F.R. - 4	
XIII.	Davis Bacon Act – Effective Federal Wage Schedule (submitted with GMP) – 40 U.S.C. §§ 3142 – 3148	F.R. - 4	See G.W.D. – 1 to 7
XIV.	Davis Bacon Labor Standards Provisions – 29 C.F.R. Part 3 and Part 5 and 49 C.F.R. § 18.36(i)(4), (5)	F.R. - 5	
XV.	Equal Opportunity Clause – 41 C.F.R. § 60–1.4	F.R. - 35	Attachment 6 (Page F.R. – 52)
XVI.	Certification of Non-Segregated Facilities – 41 C.F.R. § 60-1.8	F.R. - 38	Attachment 7 (Page F.R. – 53)
XVII.	Notice of Requirement for Affirmative Action – 41 C.F.R. § 60-4.2	F.R. - 38	
XVIII.	Equal Employment Opportunity Construction Contract Specifications – 41 C.F.R. § 60-4.3 and 49 C.F.R. § 18.36(i)(3)	F.R. - 39	
XIX.	Termination of Contract – 49 C.F.R. § 18.36(i)(2)	F.R. - 43	
XX.	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – 2 C.F.R. Part 1200	F.R. - 43	Attachment 8 (Page F.R. – 54)
XXI.	Contract Work Hours and Safety Standards Act Requirements – 29 C.F.R. Part 5 and 49 C.F.R. § 18.36(i)(6)	F.R. - 44	
XXII.	Clean Air and Water Pollution Control – 49 C.F.R. § 18.36(i)(12)	F.R. - 44	
XXIII.	Trafficking Victims Protection – 2 C.F.R. Part 175	F.R. - 44	
XXIV.	Banning Text Messaging While Driving – Executive Order 13513 and DOT Order 3902.10	F.R. - 45	

Federal Regulations: Part 3

Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans Or Grants from the United States

Title 29, Part 3 of the Code of Federal Regulations

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division

WH – 1244 (Revised December 2008)

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Section Contents

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Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01–2008; and Employment Standards Order No. 2001–01.

Source: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

§ 3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

§ 3.2 Definitions.

As used in the regulations in this part:

(a) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets,

subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part.

(b) The terms *construction*, *prosecution*, *completion*, or *repair* mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms *public building* or *public work* include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term *building or work financed in whole or in part by loans or grants from the United States* includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is *employed* and receiving *wages*, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term *any affiliated person* includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term *Federal agency* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

§ 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term *employee* will not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, will furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement will be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and will be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(c) The requirements of this section will not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008]

§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 will be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement will be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, will be kept available, or will be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor will preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records will set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records will be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A *bona fide prepayment of wages* is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however*, That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions will serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended and part 531 of this title. When such a deduction is made the additional records required under § 516.25(a) of this title will be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 will comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application will be in writing and will be addressed to the Secretary of Labor.
- (b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of § 3.6, and specifies any conditions which have changed in regard to the payroll deductions.
- (c) The application will state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation will be accompanied by a full statement of the facts indicating such compliance.
- (d) The application will include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- (e) The application will state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor will decide whether or not the requested deduction is permissible under provisions of § 3.6; and will notify the applicant in writing of his decision.

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages will be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment will be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part will expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5(a) of this subtitle.

Federal Regulations: Part 5 **Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction**

Title 29, Part 5 of the Code of Federal Regulations

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division

WH – 1244 (Revised May 2011)

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

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Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.*; and the laws listed in 5.1(a) of this part; Secretary's Order 01–2008; and Employment Standards Order No. 2001–01.

Source: 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A appear at 61 FR 19984, May 3, 1996.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97–424).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).
35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).
36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).
39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).
40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).
42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).
43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).
44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).
45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).
46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).
47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).
48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).
49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).
50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).
51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).
52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).
53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).
54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).
55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).
56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).
57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4).Note. Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).
58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).
59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).
60. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term *Secretary* includes the Secretary of Labor, the Deputy under Secretary for Employment Standards, and their authorized representatives.

(b) The term *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term *Federal agency* means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term *Agency Head* means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term *Contracting Officer* means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term *labor standards* as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term *United States or the District of Columbia* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term *contract* means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms *construction, prosecution, completion, or repair* mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not "construction, prosecution, completion, or repair" (see *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term *public building* or *public work* includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term *site of the work* is defined as follows:

(1) *The site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work*, *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, *and provided* they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;

(3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the *site of the work*. Such permanent, previously established facilities are not part of the *site of the work*, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms *apprentice*, *trainee*, and *helper* are defined as follows:

(1) *Apprentice* means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) 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

Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) *Trainee* means 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 standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to *apprentices* and *trainees* employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of "helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added to wage determinations pursuant to § 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term *wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term *wage determination* includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination will be in accordance with the provisions of § 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000]

§ 5.3-5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head will cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(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 C.F.R. 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 (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics will 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 § 5.5(a)(4). 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 accurately 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 (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) will 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)(A) The contracting officer will require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract will be classified in conformance with the wage determination. The contracting officer will approve an additional classification and wage rate and fringe benefits therefore 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 will be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 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 will 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 or will notify 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 paragraphs (a)(1)(ii) (B) or (C) of this section, will 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.

(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 will either pay the benefit as stated in the wage determination or will 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.

(2) *Withholding*. The (write in name of Federal Agency or the loan or grant recipient) will 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 will 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 will 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 of 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 29 C.F.R. 5.5(a)(1)(iv) 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 will 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 will 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)(A) The contractor will submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal 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 (write in name of agency). The payrolls submitted will set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses will not be included on weekly transmittals. Instead the payrolls will only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors will maintain the full social security number and current address of each covered worker, and will provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted will 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 will certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 C.F.R. part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on 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 C.F.R. 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 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(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 will make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and will 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 Federal 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 C.F.R. 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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 will 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, will 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 will 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 will 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 will 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 will be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 C.F.R. 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 will 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 will be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees will 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 will 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 will 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 will be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(5) *Compliance with Copeland Act requirements.* The contractor will comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal 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 will be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 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 C.F.R. 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 will not be subject to the general disputes clause of this contract. Such disputes will be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. 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 agency, 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 C.F.R. 5.12(a)(1).

(ii) No part of this contract will 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 C.F.R. 5.12(a)(1).

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

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head will cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses will be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(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 will 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; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor will be liable for the unpaid wages. In addition, such contractor and subcontractor will 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 will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(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 (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) will 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 (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor will insert in any subcontracts the clauses set forth in paragraph (b)(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 will be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head will cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor will maintain payrolls and basic payroll records during the course of the work and will preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records will contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head will cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph will be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140,
	1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140,

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, § 5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

§ 5.6 Enforcement.

(a)(1) It will be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts will promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) will be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and will be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with employees, which will be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care will be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations will also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations will be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements will be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 C.F.R. part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator will cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners will cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments

disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency will submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency will furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies will furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports will be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) *Additional information.* Upon request, the Agency Head will transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report will be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics will be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor will be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages will have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator will be advised of the action

taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages will include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section will be reviewed by the Administrator or an authorized representative who will issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order will be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986]

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, will take such action as may be necessary to cause the suspension of the payment, advance or guarantee 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.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor will request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter will be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator will be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings will request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request will set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, to which will be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing will be conducted in accordance with the procedures set forth in 29 C.F.R. part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator will notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and will issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) will so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) will explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator will examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator will refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator will so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) will file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review will be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling will be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator will advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator will be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest will be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator will transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or

authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who will be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator will notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator will afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator will furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request will be made by letter postmarked within 30 days of the date of the letter from the Administrator, and will set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, to which will be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge will issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge will issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section will be conducted in accordance with 29 C.F.R. part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings will be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and will contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 C.F.R. part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract will be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract will be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 will be awarded to any contractor or subcontractor on the

ineligible list pursuant to that paragraph, or to “any firm, corporation, partnership, or association” in which such contractor or subcontractor has a “substantial interest.” A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which will include the reasons therefor, and such person or firm will be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm will have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, will be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding will be final and the Administrator will so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator will be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request will be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(ii) The request will include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who will conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings will be conducted in accordance with the procedures set forth at 29 C.F.R. part 6.

(5) *Referral to the Administrative Review Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding will be conducted in accordance with the procedures set forth at 29 C.F.R. part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

§ 5.13 *Rulings and interpretations.*

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of

the labor standards provisions of any of the statutes listed in § 5.1 will be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations will be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary will be submitted in writing, and will set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The “basic rate of pay” under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the “regular rate” under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the “basic rate” under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds will be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, will be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract will be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1 1/2 times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, will not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act will be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215-0140 and 1215-0017. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215-0017)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996]

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor will be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable will be submitted to the Employment and Training Administration, which will certify such prior approval or recognition of the program. In every other respect, the

provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—will apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen will not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 *Withdrawal of approval of a training program.*

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

§ 5.20 *Scope and significance of this subpart.*

The 1964 amendments (Pub. L. 88–349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.12.

§ 5.21 *[Reserved]*

§ 5.22 *Effect of the Davis-Bacon fringe benefits provisions.*

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages” and “prevailing wages”, as used in the Davis-Bacon Act.

§ 5.23 *The statutory provisions.*

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” will include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§ 5.24 *The basic hourly rate of pay.*

“The basic hourly rate of pay” is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 *Rate of contribution or cost for fringe benefits.*

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

§ 5.26 *“* * * contribution irrevocably made * * * to a trustee or to a third person”.*

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The “third person” must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.27 *“* * * fund, plan, or program”.*

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements

commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 *Unfunded plans.*

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by § 5.5(a)(1)(iv).

§ 5.29 *Specific fringe benefits.*

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits

must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under § 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute is not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefits payments				
		Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	\$3.25					
Carpenters	4.00	\$0.15				
Painters	3.90	.15	\$0.10	\$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20			\$0.05
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of § 5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of § 5.30 will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of § 5.30, by paying directly to the painters a straight time hourly rate of not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for "painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be \$4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be \$3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question

of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

XV. EQUAL OPPORTUNITY CLAUSE – 41 C.F.R. § 60-1.4(b)

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action will include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order

11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provision, including sanctions for noncompliance: *Provided, however*, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City the Contractor may request the U.S. to enter into such litigation to protect the interests of the U.S.

See **Attachment 6**.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT
SPECIFICATIONS**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it will physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors will be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The contractor will implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract will apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women will excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees will be employed by the contractor during the training period and the contractor will have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees will be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The contractor will document these efforts fully and will implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor will specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this will be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor will provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendent, general foremen, etc., prior to the initiation of construction work at any job site. A written record will be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor will send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation will not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The contractor will not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor will not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, will implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
14. The contractor will designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records will at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records will be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors will not be required to maintain separate records.
15. Nothing herein provided will be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

XVI. CERTIFICATION OF NON-SEGREGATED FACILITIES – 41 C.F.R. § 60-1.8

See **Attachment 7**.

XVII. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION – 41 C.F.R. § 60-4.2

- A. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

- Goals for minority participation for each trade (Vol. 45 Federal Register pg. 65984 10/3/80)
- Goals for female participation in each trade (6.9%)

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 C.F.R. Part 60-4 will be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training will be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor will make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project, for the sole purpose of meeting the Contractor's goals, will be a violation of the contract, the Executive Order, and the regulations in 41 C.F.R. Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- C. The Contractor will provide written notification to the Director, OFCCP, within 10 working days of

award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification will list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

- D. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Arizona, Maricopa County, City of Phoenix.

XVIII. EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS – 41 C.F.R. § 60.4.3 AND 49 C.F.R. § 18.36(i)(3)

- A. As used in these specifications:

1. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
2. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
3. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
4. "Minority" includes:
 - a. Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - d. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- B. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it will physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice that contains the applicable goals for minority and female participation and set forth in the solicitations from which this Contract resulted.

- C. If the Contractor is participating (pursuant to 41 C.F.R. 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors will be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- D. The Contractor will implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each

construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract will apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- E. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women will excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees will be employed by the Contractor during the training period and the Contractor will have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees will be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The Contractor will document these efforts fully and will implement affirmative action steps at least as extensive as the following:
 - 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor will specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - 3. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this will be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.
 - 4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - 5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor will provide notice of these programs to the sources compiled under paragraph G (2) above.
 - 6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO

obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record will be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.
 9. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 11. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60-3.
 12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 13. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 14. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
 15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
 16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a Contractor association, joint Contractor union, Contractor community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its

obligations under 18.7a through 18.7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation will not be a defense for the Contractor's noncompliance.

- I. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally,) the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
- J. The Contractor will not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. The Contractor will not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- L. The Contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, will implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 C.F.R. 60-4.8.
- N. The Contractor will designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records will at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records will be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractor s will not be required to maintain separate records.
- O. Nothing herein provided will be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

XIX. TERMINATION OF CONTRACT – 49 C.F.R. § 18.36(i)(2)

- A. The City may, by written notice, terminate this Contract in whole or in part at any time, either for the City's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services will be immediately discontinued (unless the notice directs otherwise) and all

materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the City.

- B. If the termination is for the convenience of the City, an equitable adjustment in the Contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- C. If the termination is due to failure to fulfill the Contractor's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor will be liable to the City for any additional cost occasioned to the City thereby.
- D. If, after notice of termination for failure to fulfill contractor obligations, it is determined that the Contractor had not so failed, the termination will be deemed to have been effected for the convenience of the City. In such event, adjustment in the Contract price will be made as provided in paragraph (B) of this clause.
- E. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided bylaw or under this Contract.

XX. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – 2 C.F.R. Part 1200

See **Attachment 8**.

The Bidder certifies, by submission of this proposal or acceptance of this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor/bidder or any lower tier participant is unable to certify to this statement, it will attach an explanation to this bid.

SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

XXI. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS – 29 C.F.R. PART 5 AND 49 C.F.R. § 18.36(i)(6)

See Article XIV of this Exhibit.

XXII. CLEAN AIR AND WATER POLLUTION CONTROL – 49 C.F.R. § 18.36(i)(12)

Contractors and subcontractors agree:

- A. That any facility to be used in the performance of the Contract or subcontract or to benefit from the Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

- B. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- C. That, as a condition for the award of this Contract, the Contractor or subcontractors will notify the City of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract is under consideration to be listed on the EPA List of Violating Facilities; and,
- D. To include or cause to be included in any construction contract or subcontract that exceeds \$100,000 the aforementioned criteria and requirements.

XXIII. TRAFFICKING VICTIMS PROTECTION – 2 C.F.R. PART 175

This Contract may be unilaterally terminated, without penalty:

- A. If the Contractor or a subcontractor that is a private entity is determined to have:
 - 1. Engaged in severe forms of trafficking in persons during the term of this Contract;
 - 2. Procured a commercial sex act during the term of this Contract; or
 - 3. Used forced labor in the performance of the Contract or subcontracts to this Contract.
- B. If an employee of the Contractor or an employee of a subcontractor is determined to have engaged in the above-listed prohibited act through conduct that is either:
 - 1. Associated with performance of this Contract; or
 - 2. Imputed to the City using the standards and due process for imputing the conduct of an individual to an organization as provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," as implemented by the Federal awarding agency at 2 C.F.R. Part 376.

The Contractor must inform the City immediately of any information received from any source alleging a violation of the prohibited acts during the term of this Contract.

For purposes of this Section:

- 1. "Employee" means either:
 - 1. An individual employed by the Contractor or subcontractor who is engaged in the performance of this Contract or a subcontract to this Contract; or
 - 2. Another person engaged in the performance of the Contract not compensated by the Contractor or a subcontractor including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 3. "Private entity" means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. 175.25, and includes:
 - 1. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. 175.25(b).
 - 2. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

XXIV. Banning Text Messaging While Driving – Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 30, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the City and Contractor are encouraged to: (1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work related to a grant or sub-grant, (2) conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishing new rules and programs or re-evaluating existing programs to prohibit text messaging while driving; and education, awareness, and other outreach to employees about the safety risks associated with texting while driving. The substance of this provision will be included in all sub-grants, contracts, and subcontracts.

XXV. Occupational Safety And Health Act of 1970 (29 CFR Part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

ATTACHMENT 1 - BUY AMERICAN CERTIFICATION

Part 1

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic products
3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To furnish US domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the "facility". The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.

- c) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

ATTACHMENT 1 - BUY AMERICAN CERTIFICATION **Part 2**

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
 - a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing US domestic products
- 3. To furnish US domestic product for any waiver request that the FAA rejects.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b).

By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- d) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- e) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- f) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 waiver is:

- c) Detailed cost information for total project using US domestic product
- d) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

ATTACHMENT 2 – CERTIFICATION REGARDING LOBBYING

As a condition of responsiveness, this Certification must be submitted with each bid exceeding \$100,000.

The undersigned [Bidder/Contractor] certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Bidder/Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Bidder's/Contractor's Authorized Official

_____ Name and Title of Bidder's/Contractor's Authorized Official

_____ Bidder's/Contractor's Firm Name

_____ Date

ATTACHMENT 3 - RIGHTS IN DATA AND RIGHTS IN INVENTIONS

Contractor by entering into this Contract with the City to perform services associated with or in requirement of the conditions stated in this Contract does, by affixing their authorized signature on the lines provided below, agree to the following:

- A. That no sole rights to data provided in the submission or in fulfillment of contract requirements exist within the domain of the Contractor.
- B. That all data provided in the submission or in the documents provided in fulfillment of contracts become the property of the City for its use and benefit.
- C. That no data submitted in documents required for contract fulfillment will be regarded by the City as proprietary to the Contractor.
- D. 1 "Intellectual Property Rights" or "IPR" mean all intellectual property rights, including with limitation, any rights in any invention, patent, discovery, improvement, know-how, utility model, trade-mark, copyright, industrial design or mask work, integrated circuit topography, trade secret and all rights of whatsoever nature in computer software and data, Confidential Information, and all intangible rights or privileges of a nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and will include all rights in any applications and granted registrations for any of the foregoing.

2. "Joint IPR" means the Intellectual Property Rights conceived, created, developed, or reduced to practice in a Project pursuant to this Contract.
- E. Intellectual Property Ownership – the City will own all right, title, and interest in any Intellectual Property conceived, developed, created, or reduced to practice pursuant to this Contract and Contractor will have no ownership interest therein. Contractor hereby irrevocably transfers, conveys and assigns to City all of its right, title and interest therein and in any property owned or to be owned by City under this Contract. Contractor will execute such documents, render such assistance, and take such other action as City may reasonably request, at City's reasonable expense, to apply for, register, perfect, confirm, and protect City's Intellectual Property ownership interests. City will have the exclusive right to apply for or register any patents, mask work right, copyrights, and such other proprietary protections with respect thereto.

All documents including, but not limited to artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analysis, studies or any other original works of authorship created by Contractor in the performance of this Contract are to be and remain "works for hire" under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the work(s) will belong to the City pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is/are the subject matter of this Contract is deemed to not be work for hire, then Contractor hereby assigns to the City all of the right, title and interest for the entire world in and to the work(s) and the copyright therein. Contractor agrees to cooperate and execute additional documents reasonably necessary to conform with its obligations under this paragraph.

All Joint IPR will be the exclusive property of the City; and the Contractor hereby assigns all right, title, and interest in the same to the City. Any and all intellectual property conceived by the Contractor prior to the term of this Contract and utilized by it in rendering duties to the City are hereby licensed to the City for use in its operations and for an infinite duration. This license is non-exclusive, and may be assigned without the Contractor's prior written approval by the City. Contractor agrees to provide all reasonable assistance requested by the City for the registration and protection of such intellectual property rights free of charge.

_____ Signature of Contractor's Authorized Official
_____ Name and Title of Contractor's Authorized Official
_____ Bidder's/Contractor's Firm Name
_____ Date

ATTACHMENT 4 – TRADE RESTRICTION CERTIFICATION

The Bidder/Contractor or subcontractor/subconsultant, by submission of a bid and/or execution of a contract, certifies that it:

- A. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- B. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- C. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 C.F.R. 30.17, no contract will be awarded to a Bidder/Contractor or subcontractor/subconsultant who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the FAA may direct through the City cancellation of the contract at no cost to the Government.

Further, the Bidder/Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor/subconsultant unless it has knowledge that the certification is erroneous.

The Bidder/Contractor will provide immediate written notice to the City if the Bidder/Contractor learns that its certification or that of a subcontractor/subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor/subconsultant agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Bidder/Contractor or subcontractor/subconsultant knowingly rendered an erroneous certification, the FAA may direct through the City cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Bidder/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the U.S. and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, U.S.C. Section 1001.

_____ Signature of Bidder's/Contractor's Authorized Official

_____ Name and Title of Bidder's/Contractor's Authorized Official

_____ Bidder's/Contractor's Firm Name

_____ Date

ATTACHMENT 5 – RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS CERTIFICATION

- A. Definitions. The definitions pertaining to this clause are those that are set forth in 49 C.F.R. 30.7-30.9.
- B. General. This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law No. 100-223.
- C. Restrictions. The Contractor will not knowingly enter into any subcontract under this Contract:
1. with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or
 2. for the supply of any product for use on the Federal Public works project under this Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.
- D. Certification. The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the Federal public works project under this Contract are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., unless the Contractor has knowledge that the certification is erroneous.
- E. Erroneous certification. The certification in paragraph (B) of the provision entitled "Restriction on Federal Public Works Projects-Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may cancel this Contract for default at no cost to the Government.
- F. Cancellation. Unless the restrictions of this clause are waived as provided in paragraph (E) of the provision entitled "Restriction on Federal Public Works Projects-Certification," if the Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this Contract of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contracting Officer may cancel this Contract for default, at no cost to the Government.
- G. Subcontracts. The Contractor will incorporate this clause, without modification, including this paragraph (G) in all solicitations and subcontracts under this Contract:

Certification Regarding Restrictions on Federal Public Works Projects- Subcontractors

1. The Bidder/Contractor, by submission of an offer and/or execution of a Contract certifies that the Offeror/Contractor is:
 - a. not a Bidder/Contractor owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or
 - b. not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, U.S.C SECTION 1001.

2. The Bidder will provide immediate written notice to the Contractor if, at any time, the Bidder learns that its certification was erroneous by reason of changed circumstances.
3. The Contractor will not knowingly enter into any subcontract under this Contract:
 - a. with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or
 - b. for the supply of any product for use on the Federal public works project under this Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The Contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.
4. Unless the restrictions of this clause have been waived under the Contract for the Federal public works project, if a Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this Contract at no cost to the Government.
5. Definitions. The definitions pertaining to this clause are those that are set forth in 49 C.F.R. 30.7-30.9.
6. The certification in paragraph (G) (1) of this clause is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this subcontract at no cost to the Government.
7. The Contractor agrees to insert this clause, without modification, including this paragraph, in all solicitations and subcontracts under this clause.

_____ Signature of Bidder's/Contractor's Authorized Official

_____ Name and Title of Bidder's/Contractor's Authorized Official

_____ Bidder's/Contractor's Firm Name

_____ Date

**ATTACHMENT 6 - CERTIFICATION ON PREVIOUS CONTRACTS
SUBJECT TO EQUAL OPPORTUNITY CLAUSE**

Each Contractor and proposed subcontractors must complete the following form by checking the appropriate blanks.

The Contractor or subcontractor has _____ has not _____ participated in a previous contract subject to the Equal Opportunity Clause prescribed by Executive Order 11246, as amended, of September 24, 1965.

The Contractor or subcontractor has _____ has not _____ submitted all compliance reports in connection with any such contract due under the applicable filing requirements; and that representations indicating submission of required compliance reports signed by proposed subcontractors will be obtained prior to award of subcontractors.

If the Contractor or subcontractor has participated in a previous contract subject to the Equal Opportunity Clause and has not submitted compliance reports due under applicable filing requirements, the Contractor will submit a compliance report on Standard Form 100, "Employee Information Report EEP-1" prior to the award of this Contract.

Date: _____

Name of Contractor or subcontractor: _____

Signature and Title: _____

Business Address: _____

ATTACHMENT 7 - CERTIFICATION OF NON-SEGREGATED FACILITIES

This Certification of Non-Segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-Segregated Facilities will be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.
2. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

The Federally assisted Contractor certifies that he does not maintain or provide, for his employees any segregated facilities at any of his establishment, and that he does not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The Federally assisted Construction Contractor certifies further that he will not maintain or provide for his employees segregated facilities at any of his establishments, and that will not permit his employees to perform their services at any location, under this control, where segregated facilities are maintained. The Federally assisted Construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract.

As used in this certification, the term "segregated facilities" means any waiting room, work areas, and washrooms, restaurants and other eating area, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, sex or national origin, because of habit, local custom, or any other reason. The Federally assisted Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for special time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that he will retain such certifications in his files.

Certification: The above information is true and complete to the best of my knowledge and belief.

Name of Contractor or subcontractor: _____

Signature and Title: _____

Business Address: _____

**ATTACHMENT 8 - CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY
MATTERS**

- A. The Bidder/Contractor certifies to the best of its knowledge and belief that the Bidder/Contractor and/or any of its Principals:
1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 2. Have not within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws or receiving stolen property; and
 3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (A) (2) of this provision.
 4. Have not within a three-year period preceding this bid been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
 5. Have not within a three-year period preceding this bid had one or more contracts terminated for default by any Federal agency.
- B. For the purpose of this Certification, "Principals" means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE U.S. AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER S TITLE 18, U.S.C. SECTION 1001.
1. The Bidder/Contractor must provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Bidder/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 2. A certification that any of the items in paragraph (A) of this provision exists will not necessarily result in withholding of an award. However, the certification will be considered in connection with a determination of the Bidder's/Contractor's responsibility. Failure of the Bidder/Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Bidder/Contractor non-responsible.
 3. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (A) of this provision. The knowledge and information of a Bidder/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 4. The certification in paragraph (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the Contract for default.

_____ Signature of Bidder's/Contractor's Authorized Official

_____ Name and Title of Bidder's/Contractor's Authorized Official

_____ Bidder's/Contractor's Firm Name

_____ Date

(FAA/Date)

TITLE 29 PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Contents

§3.1 Purpose and scope.

§3.2 Definitions.

§3.3 Weekly statement with respect to payment of wages.

§3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

§3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

§3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

§3.7 Applications for the approval of the Secretary of Labor.

§3.8 Action by the Secretary of Labor upon applications.

§3.9 Prohibited payroll deductions.

§3.10 Methods of payment of wages.

§3.11 Regulations part of contract.

Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

Source: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

§3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

§3.2 Definitions.

As used in the regulations in this part:

(a) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part.

(b) The terms *construction*, *prosecution*, *completion*, or *repair* mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms *public building* or *public work* include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term *building or work financed in whole or in part by loans or grants from the United States* includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is *employed* and receiving *wages*, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term *any affiliated person* includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term *Federal agency* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

§3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term *employee* shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/index.htm> or its successor site.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008; 82 FR 2224, Jan. 9, 2017]

§3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1235-0008)

§3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A *bona fide prepayment of wages* is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under §516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

§3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under §3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of §3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of §3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

§3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of §3.6; and shall notify the applicant in writing of his decision.

§3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under §3.6 are prohibited.

§3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

TITLE 29 PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

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- §5.9 Suspension of funds.
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- §5.20 Scope and significance of this subpart.
- §5.21 [Reserved]
- §5.22 Effect of the Davis-Bacon fringe benefits provisions.
- §5.23 The statutory provisions.
- §5.24 The basic hourly rate of pay.
- §5.25 Rate of contribution or cost for fringe benefits.
- §5.26 “* * * contribution irrevocably made * * * to a trustee or to a third person”.
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- §5.28 Unfunded plans.
- §5.29 Specific fringe benefits.
- §5.30 Types of wage determinations.
- §5.31 Meeting wage determination obligations.
- §5.32 Overtime payments.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order No. 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114-74 at §701, 129 Stat 584.

Source: 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A of part 5 appear at 61 FR 19984, May 3, 1996.

§5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).
35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).
36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).
39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).
40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).
42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).
43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).
44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).
45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).
46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).
48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).
49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).
50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).
51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).
52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).
53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).
54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).
55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).
56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).
57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4)).
- Note. Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).
58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).
59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).
60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§5.2 Definitions.

- (a) The term Secretary includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.
- (b) The term Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or authorized representative.
- (c) The term Federal agency means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in §5.1.
- (d) The term Agency Head means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.
- (e) The term Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.
- (f) The term labor standards as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in §5.1, and the regulations in parts 1 and 3 of this subtitle and this part.
- (g) The term United States or the District of Columbia means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of

Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term contract means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in §5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms construction, prosecution, completion, or repair mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (1) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (1)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (1)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (1)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not “construction, prosecution, completion, or repair” (see Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.), 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term public building or public work includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term site of the work is defined as follows:

(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (1)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in paragraph (1)(1) of this section;

(3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (1)(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) 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 Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) Trainee means 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 standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of "helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added to wage determinations pursuant to §5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act

include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of §1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000; 82 FR 2225, Jan. 9, 2017]

§§5.3-5.4 [Reserved]

§5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(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 (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such 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 §5.5(a)(4). 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 accurately 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 (a)(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)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, 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 therefore 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, U.S. Department of Labor, Washington, DC 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 or will notify 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 paragraphs (a)(1)(ii) (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.

(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.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) 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 of 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 29 CFR 5.5(a)(1)(iv) 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)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal 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 (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee

(e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(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 provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on 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 paragraph (a)(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 (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name 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 Federal 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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal 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 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 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 agency, 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.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These

clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(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; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(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 (b)(1) of this section, in the sum of \$26 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) 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 (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control No.
(a)(1)(ii)(B)	1235-0023
(a)(1)(ii)(C)	1235-0023
(a)(1)(iv)	1235-0023
(a)(3)(i)	1235-0023
(a)(3)(ii)(A)	1235-0023
	1235-0008
(c)	1235-0023

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 81 FR 43450, July 1, 2016; 82 FR 2225, 2226, Jan. 9, 2017; 83 FR 12, Jan 2, 2018]

§5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by §5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in §5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of §5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by §5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of §5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to §5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by §5.5 and the applicable statutes listed in §5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in §5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in §5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§5.7 Reports to the Secretary of Labor.

(a) Enforcement reports. (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor

has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under §5.8.

(2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) Additional information. Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) Contract termination. Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in §5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$26 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) Findings and recommendations of the Agency Head. The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986; 81 FR 43450, July 1, 2016; 83 FR 12, Jan. 2, 2018]

§5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee 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.

§5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to §5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or §5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under §5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with §5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

§5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in §5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in §5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in §5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to §5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in §5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in §5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under paragraph (a)(1) of this section may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in §5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in §5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in §5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in §5.1. No particular form is prescribed for the submission of a request under this section.

(4) Referral to the Chief Administrative Law Judge. The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) Referral to the Administrative Review Board. If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 82 FR 2226, Jan. 9, 2017]

§5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in §5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

[82 FR 2226, Jan. 9, 2017]

§5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in §5.1 unless the statute specifically provides such authority.

§5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) General. Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) Exemptions. Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) Tolerances. (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and §778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See §5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in §5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) Variations. (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1 1/2 times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1235-0023 and 1235-0018. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1235-0018)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996; 82 FR 2226, Jan. 9, 2017]

§5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of §5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of §5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to §5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

§5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or

enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in §5.12.

§5.21 [Reserved]

§5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in §1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of §1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages” and “prevailing wages”, as used in the Davis-Bacon Act.

§5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§5.24 The basic hourly rate of pay.

“The basic hourly rate of pay” is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See §5.5(a)(1)(i) and (iii).

§5.26 “* * * contribution irrevocably made * * * to a trustee or to a third person”.

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The “third person” must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§5.27 “* * * fund, plan, or program”.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words “reasonably anticipated” are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be “bona fide” and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by §5.5(a)(1)(iv).

§5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under §5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under §5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	\$3.25					
Carpenters	4.00	\$0.15				
Painters	3.90	.15	\$0.10	\$0.20		

Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		\$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of §5.30, the obligations for “painters” will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for “bona fide” fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for “painters” in the illustration in paragraph (c) of §5.30 will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributions of not less than a total of 45 cents an hour for “bona fide” fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for “painters” in the illustration in paragraph (c) of §5.30, by paying directly to the painters a straight time hourly rate of not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for “painters” may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be \$4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be \$3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

§5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase “contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program” was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

General Decision Number: AZ180008 01/05/2018 AZ8

Superseded General Decision Number: AZ20170008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018

CARP0408-005 07/01/2016

	Rates	Fringes
CARPENTER (Including Cement Form Work).....	\$ 25.48	11.54

ENGI0428-001 06/01/2017

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1.....	\$ 24.09	10.52
Group 2.....	\$ 27.36	10.52
Group 3.....	\$ 28.44	10.52
Group 4.....	\$ 29.47	10.52

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1: A-frame boom truck, air compressor, Beltcrete, boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:

ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd), Tractor (dozer, pusher-all).

GROUP 3:

ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman & similar types), Tower Crane or similar type.

MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive \$0.01 per hour per foot over 80 ft in addition to regular rate of pay

Premium pay for performing hazardous waste removal \$0.50 per hour over base rate.

* IRON0075-004 08/01/2017

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar.....	\$ 26.00	18.85

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson Zone
2: 050 to 100 miles - Add \$4.00
Zone 3: 100 to 150 miles - Add \$5.00 Zone
4: 150 miles & over - Add \$6.50

LABO0383-002 06/01/2017

	Rates	Fringes
Laborers:		
Group 1.....	\$ 17.93	5.01
Group 2.....	\$ 18.83	5.01
Group 3.....	\$ 19.53	5.01
Group 4.....	\$ 20.47	5.01
Group 5.....	\$ 21.33	5.01

LABORERS CLASSIFICATIONS:

GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only: General/Cleanup Laborer. Maricopa County Only: Flagger.

GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).

GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed Control, Scissor Lift, Hydro Mobile Scaffold Builder.

PAIN0086-001 04/01/2014

	Rates	Fringes
PAINTER		
PAINTER (Yavapai County only), SAND BLASTER/WATER BLASTER (all Counties).....	\$ 19.50	4.85

ZONE PAY: More than 100 miles from Old Phoenix Courthouse \$3.50 additional per hour.

SUAZ2009-001 04/20/2009

	Rates	Fringes
CEMENT MASON.....	\$ 19.28	3.99
ELECTRICIAN.....	\$ 22.84	6.48
IRONWORKER (Rebar)		
Pima County.....	\$ 23.17	14.83
Pinal County.....	\$ 20.27	8.35
LABORER		
Asphalt Raker.....	\$ 15.49	3.49
Compaction Tool Operator.....	\$ 14.59	2.91
Concrete Worker.....	\$ 13.55	3.20
Concrete/Asphalt Saw.....	\$ 13.95	2.58
Driller-Core, diamond, wagon, air track.....	\$ 16.94	3.12
Dumpman Spotter.....	\$ 14.99	3.16
Fence Builder.....	\$ 13.28	2.99
Flagger		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 12.35	1.59
Formsetter.....	\$ 16.09	3.97
General/Cleanup Laborer		
Coconino, Maricopa, Mohave, Pima, Yavapai & Yuma.....	\$ 14.54	3.49
Grade Setter (Pipeline).....	\$ 17.83	5.45
Guard Rail Installer.....	\$ 13.28	2.99
Landscape Laborer.....	\$ 11.39	
Landscape Sprinkler Installer.....	\$ 15.27	
Pipelayer.....	\$ 14.81	2.96
Powderman, Hydrasonic.....	\$ 16.39	2.58
OPERATOR: Power Equipment		
Asphalt Laydown Machine.....	\$ 21.19	6.05
Backhoe < 1 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.37	3.85
Backhoe < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Clamshell < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Concrete Pump (Truck Mounted with boom only)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 19.92	7.10
Crane (under 15 tons).....	\$ 21.35	7.36
Dragline (up to 10 cu yd)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59

Drilling Machine (including Water Wells).....	\$ 20.58	5.65
Grade Checker		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 16.04	3.68
Hydrographic Seeder.....	\$ 15.88	7.67
Mass Excavator.....	\$ 20.97	4.28
Milling Machine/Rotomill.....	\$ 21.42	7.45
Motor Grader (Finish-any type power blade)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 21.92	4.66
Motor Grader (Rough)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 20.07	4.13
Oiler.....	\$ 18.15	8.24
Power Sweeper.....	\$ 16.76	4.44
Roller (all types Asphalt)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.27	3.99
Roller (excluding asphalt).....	\$ 15.65	3.32
Scraper (pneumatic tired)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.69	3.45
Screed		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.54	3.72
Shovel < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Skip Loader (all types <3 cu yd).....	\$ 18.28	5.30
Skip Loader (all types 3 < 6 cu yd)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.64	4.86
Skip Loader (all types 6 < 10 cu yd).....	\$ 20.15	4.52
Tractor (dozer, pusher - all)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.26	2.65
PAINTER		
Coconino, Maricopa, Mohave, Pima, Pinal & Yuma.....	\$ 15.57	3.92
TRUCK DRIVER		
2 or 3 Axle Dump or Flatrack.....	\$ 16.27	3.30
5 Axle Dump or Flatrack.....	\$ 13.97	2.89
6 Axle Dump or Flatrack (< 16 cu yd).....	\$ 17.79	6.42
Belly Dump.....	\$ 14.67	
Oil Tanker Bootman.....	\$ 22.03	
Self-Propelled Street Sweeper.....	\$ 13.11	5.48
Water Truck 2500 < 3900 gallons.....	\$ 18.14	4.55
Water Truck 3900 gallons and over.....	\$ 15.92	3.33
Water Truck under 2500 gallons.....	\$ 15.94	4.16

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is

Highway, 01/05/2018

a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

BID PROPOSAL
CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
PROJECT TITLE: GYR TAXIWAY A REHABILITATION AND STRENGTHENING
PROJECT No: AV41000075-1 FAA
BOND ISSUE OR BUDGET PROJECT

PROPOSAL to the City Engineer of the City of Phoenix.

In compliance with the Advertisement for Bids, by the City Engineer, the undersigned bidder:

(Print or type contractor name)

Having examined the contract documents, site of work and being familiar with the conditions to be met, hereby submits the following proposal for furnishing the material, equipment, labor and everything necessary for the completion of the work listed and agrees to execute the contract documents and furnish the required bonds and certificates of insurance for the completion of said work, at the locations and for the prices set forth on the inside pages of this form.

Understands that construction of this project will be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, 2012 revision, and the City of Phoenix Supplements, 2012 revision to the MAG Uniform Standard Specifications and Details, except as otherwise required by the project plans and specifications.

No proposal may be withdrawn for a period of 50 days after opening without consent of the Contracting Agency through the body or agent duly authorized to accept or reject the proposal except in the case of federally-assisted projects.

Understands that this proposal will be submitted with a proposal guarantee of certified check, cashier's check or surety bond for an amount not less than ten (10) percent of the amount bid, as referenced in the Call for Bids.

Agrees that upon receipt of Notice of Award, from the City of Phoenix, he will execute the contract documents within 10 calendar days.

Work will be completed within 120 calendar days, beginning with the day following the starting date specified in the Notice to Proceed. The time allowed for completion of the work includes lead time for obtaining the necessary materials and/or equipment and approvals.

The bidder will acknowledge all addenda in writing. By writing the addenda number(s) below, the bidder agrees that this proposal is computed with consideration of the specification book(s) plus any and all addenda.

<u>ADDENDA NO.</u>	<u>DATE</u>	<u>ADDENDA NO.</u>	<u>DATE</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

For _____ & /100 DOLLARS
Written Words

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
1	M-001-3.1	Mobilization/Demobilization (Maximum 5%)	1	LS		
2	M-002-4.1	Engineer's Field Offices and Concrete Curing and Testing Facility	1	LS		
3	M-003-8.1	Airport Safety and Security	1	LS		
4	P-100-3.1	Contractor Quality Control	1	LS		
5	P-100-3.2	Construction Staking	1	LS		
6	P-104-6.1	Mill and Remove Asphalt Concrete, 2-Inch Depth	69,458	SY		
7	P-104-6.2	Mill and Remove Asphalt Concrete, 8" ± (Full depth)	3,637	SY		
8	P-104-6.3	Saw Cut Portland Cement Concrete Full Depth (8" ±Depth)	330	LF		
9	P-104-6.4	Saw Cut Portland Cement Concrete for Electrical Retrofit	500	LF		
10	P-104-6.5	Remove Portland Cement Concrete (8" ± depth)	690	SY		
11	P-104-6.6	Saw Cut Asphalt Concrete Full Depth (8" ±)	1,150	LF		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
12	P-151	Clearing and Grubbing	Incidental			
13	P-152-6.1	Subgrade Preparation Under New AC TW (12-inch Depth)	7,300	SY		
14	P-152-6.2	Subgrade Preparation Under AC Shoulders (6-inch Depth)	37,257	SY		
15	P-152-6.3	Unclassified Excavation	22,332	CY		
16	P-153	Controlled Low Strength Material (CLSM)	Incidental			
17	P-156(A)-6.1	Stormwater Pollution Prevention	1	LS		
18	P-209-6.1	Crushed Aggregate Base Course (12.5 inch)	37,257	SY		
19	P-209-6.2	Crushed Aggregate Base Course (16 inch)	7,300	SY		
20	P-401-8.1	3/4" HMA Taxiway Overlay and Shoulder & Taxiway Surface Course	24,328	TN		
21	P-401-8.2	PG 70-10 Asphalt Material	1,583	TN		
22	P-401-8.3	HMA Leveling Course including PG 70-10 (Allowance)	1	AL	\$115,300.00	\$115,300.00

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
23	P-501-8.1	PCC Pavement Repair Allowance	1	ALLOW	\$5,000.00	\$5,000.00
24	P-603-5.1	Bituminous Tack Coat	11,915	GAL		
25	P-604	Compression Joint Seal for Concrete Pavement	Incidental			
26	P-605(A)-5.1	PCCP to Asphalt Pavement Edge Sealing	780	LF		
27	P-606	Adhesive Compounds Tow Component For Sealing Wire & Lights in Pavement	Incidental			
28	P-610	Structural Portland Cement Concrete	Incidental			
29	P-620-6.1	Temporary Airfield Pavement Marking Yellow (50% Application Rate)	8,250	SF		
30	P-620-6.2	Airfield Pavement Marking, Yellow	30,150	SF		
31	P-620-6.3	Airfield Pavement Marking, White	1,000	SF		
32	P-620-6.4	Airfield Pavement Marking, Black	32,770	SF		
33	P-620-6.5	Airfield Pavement Marking, Red	6,150	SF		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
34	P-620(A)-5.1	Removal of Existing Airfield Markings	3,500	SF		
35	P-620(A)-5.2	Pavement Repair Allowance	1	ALLOW	\$5,000.00	\$5,000.00
36	U-200-6.1	Underground Utility Location Allowance	1	ALLOW	\$20,000.00	\$20,000.00
37	L-100-5.1	Remove and Salvage In-Pavement Taxiway Centerline Light and Flange, Install Temporary Steel Cover on Existing Base	81	EA		
38	L-100-5.2	Excavate and Remove Existing Pull Box	2	EA		
39	L-100-5.3	Excavate and Remove Existing Conduit and Conductor	4,318	LF		
40	L-100-5.4	Remove Existing Conductor to Nearest HH/Base Can, Conduit to Remain (Approx. 2897 LF)	1	LS		
41	L-100-5.5	Remove Sign Base	2	EA		
42	L-100-5.6	Remove and Salvage Elevated Taxiway Edge Light and Transformer, Demolish Base Can	44	EA		
43	L-100-5.7	Remove and Salvage In-Pavement Taxiway Edge Light and Transformer, Demolish Base Can	3	EA		
44	L-100-5.8	Remove and Salvage Elevated Runway Guard Light and Transformer, Demolish Base Can	2	EA		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
45	L-100-5.9	Excavate and Remove Existing Handhole and Reconnect Remaining Conduits	11	EA		
46	L-100-5.10	Remove and Salvage Taxiway Guidance Sign and Isolation Transformer, Demolish Sign Base	7	EA		
47	L-100-5.11	Remove and Salvage Existing Non Lit Sign	1	EA		
48	L-100-5.12	Remove Existing Hand Hole Lid	1	EA		
49	L-100-5.13	Remove and Salvage In-Pavement Taxiway Edge Light, Install Permanent Steel Cover on Existing Base	6	EA		
50	L-100-5.14	Remove and Salvage Taxiway Guidance Sign and Isolation Transformer, Sign Base to Remain	1	EA		
51	L-100-5.15	Remove and Salvage In-Pavement Taxiway Edge Light, Fill with Concrete and Install Steel Cover	2	EA		
52	L-100-5.16	Remove and Salvage Existing Sign. Reinstall Upon Construction Phase Completion.	2	EA		
53	L-100-5.17	Provide Temporary Airfield Power Cable Jumpers and Cover Signs as Required (Approx. 2500 LF)	1	LS		
54	L-108-5.1	L-824, Type C, 2/C #8 AWG, 5kV Cable w/ #6 Ground	16,196	LF		
55	L-108-5.2	L-824, Type C, 1/C #8 AWG, 5kV Cable w/ #6 Ground	298	LF		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
56	L-110-5.1	Single-way (1) - 2" Conduit, Slurry Encased	4,565	LF		
57	L-110-5.2	Multiple-way (2) - 2" Conduit, Slurry Encased	190	LF		
58	L-110-5.3	Single-way (1) - 2" Conduit, Concrete Encased	150	LF		
59	L-110-5.4	Multiple-way (2) - 4" Conduit, Concrete Encased	270	LF		
60	L-110-5.5	Multiple-way (2) - 4" Conduit, Concrete Encased (Retrofit in Existing Full Strength Concrete Pavement)	200	LF		
61	L-110-5.6	Single-way (1)- 2" Conduit, Concrete Encased (Retrofit in Existing Full Strength Concrete Pavement)	775	LF		
62	L-110-5.7	Multiple-way (2)- 2" Conduit, Concrete Encased (Retrofit in Existing Full Strength Concrete Pavement)	235	LF		
63	L-110-5.8	Single-way (1)- 2" Conduit, Concrete Encased (Retrofit in Existing Asphalt)	105	LF		
64	L-110-5.9	Multiple-way (2) - 4" Conduit and 2-2" Conduit, Concrete Encased	125	LF		
65	L-110-5.10	Multiple-way (2) - 4" Conduit and 2-2" Conduit, Slurry Encased	60	LF		
66	L-110-5.11	Multiple-way (4) - 2" Directional Bore Concrete Encased	370	LF		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
67	L-110-5-12	Multiple-way (2) - 2" Conduit, Concrete Encased	145	LF		
68	L-110-5-13	Extend Existing 4-2" Conduits Slurry Encased and Cap, Install New Duct Marker	10	LF		
69	L-115-5.1	New Handhole, Type I, Air Craft Rated (4'x4'x4') Furnished and Installed with Aircraft Rated Lid	6	EA		
70	L-115-5.2	New Handhole, Type 1, Aircraft Rated (4'x4'x4') Furnished and Installed with Aircraft Rated Lid (Retrofit in Existing Full Strength Concrete Pavement)	2	EA		
71	L-115-5.3	Replace Handhole Lid and Top Section (4' x 4') with New Aircraft Rated Lid	1	EA		
72	L-115-5.4	Install RGL Circuit Isolation Boxes and Conduit in New Handhole	2	EA		
73	L-804(L)-4.1	Re-Install Salvaged L-804(L) Elevated Runway Guard Light and Transformer on New L-867 Base Can	2	EA		
74	L-852(L)-4.1	Re-Install Salvaged L-852T(L) In-Pavement Taxiway Edge Light and Isolation Transformer on New Shallow L-868 Base Can (Retrofit in Existing Full Strength Concrete Pavement)	8	EA		
75	L-852(L)-4.2	Re-Install Salvaged L-852A(L) LED In-Pavement Taxiway Centerline Light and Isolation Transformer on Existing Base Can with 1" Spacer Ring and New Bolts	73	EA		
76	L-852(L)-4.3	Re-Install Salvaged L-852D(L) LED In-Pavement Taxiway Centerline Light and Isolation Transformer on Existing Base Can with New Bolts	4	EA		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
77	L-852(L)-4.4	New L-852A(L) LED In-Pavement Taxiway Centerline Light and Isolation Transformer on New L-868 Base Can (Retrofit in Existing Asphalt)	2	EA		
78	L-852(L)-4.5	Re-Install Salvaged L-852B(L) LED In-Pavement Taxiway Centerline Light and Isolation Transformer on Existing Base Can with New Bolts	4	EA		
79	L-852(L)-4.6	New L-852T(L) In-Pavement Taxiway Edge Light and Isolation Transformer on New Shallow L-868 Base Can (Retrofit in Existing Full Strength Concrete Pavement)	4	EA		
80	L-852(L)-4.7	L-852T(L) In-Pavement Taxiway Edge Light and Isolation Transformer - Spares	1	EA		
81	L-852(L)-4.8	L-852A(L) LED In-Pavement Taxiway Centerline Light and Isolation Transformer - Spares	1	EA		
82	L-858(L)-5.1	New Size 2 Sign Panels and Face Insert Channels Installed in Existing Sign	3	EA		
83	L-858(L)-5.2	Re-Install Salvaged L-858 Size 2, 3 Module Guidance Sign and Transformer With New Panels and Face Insert Channels on New Sign Base	5	EA		
84	L-858(L)-5.3	New Size 2 L-858(L) LED 3-Module Guidance Sign and Isolation Transformer, on New Concrete Base	1	EA		
85	L-858(L)-5.4	New Size 2 L-858(L) LED 3 Module Airfield Guidance Sign with New Shallow Transformer Housing (Retrofit in Existing Full Strength Concrete Pavement)	1	EA		
86	L-858(L)-5.5	Re-Install Salvaged 3 Module Airfield Guidance Sign with New Shallow Transformer Housing (Retrofit in Existing Full Strength Concrete Pavement)	1	EA		

Goodyear Taxiway A Rehabilitation and Strengthening						
ITEM NO.	SPEC	DESCRIPTION	EST. QUANTITY	UNIT	Unit Cost	Total Cost
87	L-858(L)-5.6	Re-Install Salvaged 3 Module Airfield Guidance Sign with New Sign Panels and Face Insert Channels on New Shallow Transformer Housing (Retrofit in Existing Full Strength Concrete Pavement)	1	EA		
88	L-858(L)-5.7	Re-Install Unlit Sign	1	EA		
89	L-861T-4.1	Re-Install Salvaged Elevated L-861T(L) Taxiway Edge Light and Isolation Transformer on New L-867 Base Can	36	EA		
90	L-861T-4.2	New Elevated L-861T(L) LED Taxiway Edge Light and Isolation Transformer on New L-867 Base Can	16	EA		
91	L-861T-4.3	Elevated L-861T(L) LED Taxiway Edge Light (with Stem and Frangible Coupling) and Isolation Transformer - Spares	2	EA		
92	L-867/868-5.1	L-868 Spacer Rings / Base Can Extension Package (73 - 1", 37 - 1/2", 37 - 1/4", 37 - 1/8")	1	LS		
93	L-867/868-5.2	New L-867E (24" Dia) Junction Can with Blank Cover Installed	2	EA		
94	SP-14.1	Relocation of Existing Utilities, Grade Adjustments on Monitoring Wells and Unforseen Electrical Conditions	1	ALLOW	\$10,000.00	\$10,000.00
TOTAL BASE BID (ITEMS 1 THROUGH 94, INCLUSIVE)						
					_____ & /100 DOLLARS	
Written Words						

PROJECT TITLE: GYR TAXIWAY A REHABILITATION AND STRENGTHENING
PROJECT NO: AV4100075-1 FAA

THIS PROPOSAL IS SUBMITTED BY _____

a corporation organized under the laws of the state of _____

partnership consisting of _____

a joint venture of _____

or individual trading as _____

of the City of _____

FIRM _____

ADDRESS _____

CITY _____ STATE ____ ZIP CODE _____

PHONE _____ VENDOR NO. _____

BY _____

Officer and Title (signature)

Officer and Title (print or type)

WITNESS: If Contractor is an individual
(signature)

ATTEST: If Contractor is Corporation or Partnership
(signature and title)

SURETY BOND

PROJECT No: AV41000075-1 FAA

That we, _____, as Principal, (hereinafter called the Principal) and the _____, a corporation duly organized under the laws of the state of _____, a Surety, (hereinafter called Surety) are held and firmly bound unto the City of Phoenix as Obligee, in the sum of ten (10) percent of the total amount of the bid of Principal, submitted by him to the City of Phoenix for the work described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents and in conformance with A.R.S. 34-201.

WHEREAS, the said Principal is herewith submitting its proposal for **GYR Taxiway A Rehabilitation and Strengthening Project**

NOW, THEREFORE, if the City of Phoenix will accept the proposal of the Principal and the Principal will enter into a Contract with the City of Phoenix in accordance with the terms of such proposal and give such Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient Surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such Bonds and Certificates of Insurance, if the Principal will pay to the City of Phoenix the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith Contract with another party to perform the work covered by the proposal, then this obligation will be null and void, otherwise to remain in full force and effect.

Signed and sealed the _____ day of _____ A.D., 20__

Principal

TITLE

Surety

WITNESS

A.M. BEST RATING:

**City of Phoenix
Disadvantaged Business Enterprise Program – DBE
EOD – ATTACHMENT A / OUTREACH EFFORTS**

Bidder's Name:	Project Title/Number: GYR TAXIWAY A REHABILITATION AND STRENGTHENING / AV41000075-1 FAA
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Each bidder must conduct outreach efforts and submit documentation of those outreach efforts as described in the Disadvantaged Business Enterprise (DBE) Program Race & Gender Neutral Contract Clause. Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for Columns D and F. Bidders should make additional copies of this form as needed for their submittal.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope of Work Solicited	(D) Solicitation Method	(E) Small Business Selection Decision	(F) Communication of Selection Outcomes
Name: Address: City, State, Zip: _____ Number of Employees: _____ Phone Number: _____ E-Mail or Fax: _____ Range of Annual Gross Receipts: _____ Number of Years in Business: _____	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	_____ Estimated percentage of total contract value: _____ %	<input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade and/or Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail blast <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Explain why this firm was not selected as a proposed participant	Date: Methods of Communication
Name: Address: City, State, Zip: _____ Number of Employees: _____ Phone Number: _____ E-Mail or Fax: _____ Range of Annual Gross Receipts: _____ Number of Years in Business: _____	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	_____ Estimated percentage of total contract value: _____ %	<input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade and/or Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail blast <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Explain why this firm was not selected as a proposed participant	Date: Methods of Communication
Name: Address: City, State, Zip: _____ Number of Employees: _____ Phone Number: _____ E-Mail or Fax: _____ Range of Annual Gross Receipts: _____ Number of Years in Business: _____	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	_____ Estimated percentage of total contract value: _____ %	<input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade and/or Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail blast <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Explain why this firm was not selected as a proposed participant	Date: Methods of Communication



City of Phoenix
Disadvantaged Business Enterprise Program

ATTACHMENT B
SMALL BUSINESS UTILIZATION COMMITMENT (RGN)

On behalf of the Bidder, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "selected" in **EOD – ATTACHMENT A – OUTREACH EFFORTS**, will participate in this contract;
2. The Successful Bidder will comply with the Race- and Gender-Neutral post-award requirements as stated in DBE contract clause;
3. I understand and agree that any and all changes or substitutions must be authorized by the DBE Compliance Specialist prior to implementation; and
4. The following statements are true and correct:

Proposed participation of Disadvantaged Business Enterprise (DBE) firms on this contract will be:

____%

Project #: _____

Project Title: _____

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____

Date: _____

**CITY OF PHOENIX
LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS**

PROJECT NO.: AV41000075-1 FAA PROJECT TITLE: PROJECT TITLE: GYR TAXIWAY A REHABILITATION AND STRENGTHENING

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF- PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project for an **equal to or greater than 5% of the base bid**. These companies will not be removed or replaced without prior written approval by the City of Phoenix Project Manager. The City requires that ALL vendors providing work equal to or greater than 5% of the base bid are listed or you will be disqualified. If you are self-performing work, you must still list any suppliers for materials or list any subcontractors with whom you will directly contract.

COMPANY NAME _____ SIGNATURE _____

NAME & TITLE _____ PHONE NUMBER _____ DATE _____

EMAIL ADDRESS _____

**CITY OF PHOENIX
LIST OF ALL SUBCONTRACTORS AND SUPPLIERS**

PROJECT NO.: AV41000075-1 FAA PROJECT TITLE: PROJECT TITLE: GYR TAXIWAY A REHABILITATION AND STRENGTHENING

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF- PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO			

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project. These companies will not be removed or replaced on the project without prior written approval by the City of Phoenix Project Manager. The City requires that ALL vendors providing work are listed or you will be disqualified. If you are self-performing work, you must still list any suppliers for materials or list any subcontractors with whom you will directly contract.

COMPANY NAME _____ SIGNATURE _____
NAME & TITLE _____ PHONE NUMBER _____ DATE _____
EMAIL ADDRESS _____

BIDDER'S DISCLOSURE STATEMENT

Authorized Contact for this Disclosure Statement

Name: _____

Title: _____

E-mail: _____

Phone number: _____

FAX number: _____

List any other DBA, trade name, other identity, or EIN used in the last five (5) years, the state or country where filed, and the status (active or inactive): (if applicable): _____

Business Characteristics

Business entity type – Please check appropriate box and provide additional information:

- | | | |
|--------------------------|-------------------------------|------------------------------------|
| <input type="checkbox"/> | Corporation | Date of incorporation: _____ |
| <input type="checkbox"/> | Limited Liability Company | Date organized: _____ |
| <input type="checkbox"/> | Limited Liability Partnership | Date of registration: _____ |
| <input type="checkbox"/> | Limited Partnership | Date established: _____ |
| <input type="checkbox"/> | General Partnership | Date established: _____ |
| <input type="checkbox"/> | Sole Proprietor | How many years in business?: _____ |
| <input type="checkbox"/> | Other (explain) | date established: _____ |

Was the business entity formed in the State of Arizona? Yes _____ No _____

If no, indicate jurisdiction where Business Entity was formed: _____

Is the Business Entity currently registered to do business in Arizona with the Arizona Corporation Commission? Yes_____ No_____ Not required _____ (if sole proprietor or general partnership)

Does the Business Entity have a City of Phoenix business privilege license? Yes_____ No_____ If "no" explain and provide detail such as "not required" or "application in progress" or other reason.

Is the Business Entity publicly traded? Yes_____ No_____

Is the responding Business Entity a Joint Venture? Note: If the Submitting Business entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture. Yes_____ No_____

Is the Business Entity's Principal Place of Business/Executive office in Phoenix? If "no" does the Business Entity maintain an office in Phoenix? Yes_____ No_____

Provide the address and phone number for the Phoenix office. _____

Is the business certified by Phoenix as a Small Business Enterprise? Yes_____ No_____

Identify Business Entity Officials and principal Owners:

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Affiliates and Joint Venture Relationships

Does the Business entity have any Affiliates? Yes_____ No_____ Attach additional pages if necessary.

Affiliate name: _____

Affiliate EIN (if available): _____.

Affiliate's primary Business Activity: _____

Explain relationship with Affiliate and indicate percent ownership, if applicable. _____

Are there any Business Entity Officials or Principal Owners that the Business Entity has un common with this Affiliate? _____

Individual's name: _____

Position/Title with Affiliate: _____

Has the Business Entity participated in any joint Ventures within the past three years? Yes_____ No_____
(Attach additional pages if necessary)

Joint Venture Name:_____

Joint venture EIN (if applicable):_____

Identify parties to the Joint Venture:_____

Contract History

Has the Business Entity held any contracts with the city of Phoenix in the last three (3) years? Yes_____ No_____ If "yes" attach a list.

Integrity – Contract Bidding

Within the past three (3) years, has the Business Entity or any Affiliate been suspended or debarred from any government contracting process or been disqualified on any government procurement? Yes_____ No_____

Been subject to a denial or revocation of a government prequalification? Yes_____ No_____

Been denied a contract award or had a bid rejected based upon a finding of a non-responsibility by a government entity? Yes_____ No_____

Agreed to a voluntary exclusion from bidding/contracting with a government entity? Yes_____ No_____

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes_____ No_____

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes_____ No_____

For each "Yes" answer above, provide an explanation of the issues.

Integrity – Contract Award

Within the past three (3) years has the Business Entity or any Affiliate been suspended, cancelled, or terminated for cause on any government contract? Yes_____ No_____

Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? Yes_____ No_____

For each "yes" answer, provide an explanation. (Attach explanation on a separate sheet of paper).

Certifications/Licenses

Within the past three (3) years, has the Business Entity or Affiliate had a revocation, suspension, or disbarment of any business or professional permit and/or license?
Yes_____ No_____

If “yes” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Legal Proceedings

Within the past three (3) years, has the Business Entity of any Affiliate:

Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? Yes_____ No_____

Been the subject of an indictment, grant of immunity, judgment or conviction, (including entering into a plea bargain for conduct constituting a crime)? Yes_____ No_____

Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? Yes_____ No_____

Had a government entity find a willful prevailing wage or supplemental payment violation? Yes_____ No_____

Been involved in litigation as either a plaintiff or a defendant involving a copyright or patent infringement violation or an anti-trust violation? Yes_____ No_____

Other than previously disclosed, for the past three (3) years:

(i) Been subject to the imposition of a fine or penalty in excess of \$1000 imposed by any government as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination? Yes_____ No_____

(ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? Yes_____ No_____

If “yes” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Leadership Integrity

If the Business Entity is a joint Venture Entity, answer “N/A – Not Applicable” to questions below:

Within the past three (3) years has any individual previously identified, or any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute, or approve bids, proposals, contracts or supporting documentation with the city of Phoenix been subject to:

A sanction imposed relative to any business or professional permit and/or license? Yes_____ No_____

An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct? Yes_____ No_____



City of Phoenix

AFFIDAVIT OF IDENTITY

Your completion of this form is required by Arizona state law. A.R.S. §§ 1-501 and -50 only if you are a sole proprietor.

I, _____ (print full name exactly as on document), hereby affirm, upon penalty of perjury, that I presented the document marked below to the City of Phoenix, that I am lawfully present in the United States, and that I am the person stated on the document. (select one category only)

Arizona driver license issued after 1996.
Print first four numbers/letters from license:

--	--	--	--

Arizona non-operating identification license.
Print first four numbers/letters:

--	--	--	--

Birth certificate or delayed birth certificate issued in any state, territory or possession of the U.S.
Year of birth: _____; Place of birth: _____

United States Certificate of Birth Abroad.
Year of birth: _____; Place of birth: _____

United States Passport.
Print first four numbers/letters on Passport:

--	--	--	--

Foreign Passport with United States Visa.
Print first four numbers/letters on Passport:

--	--	--	--

Print first four numbers/letters on Visa:

--	--	--	--

I-94 Form with a photograph.
Print first four numbers on I-94:

--	--	--	--

USCIS Employment Authorization Document (EAD).
Print first four numbers/letters on EAD:

--	--	--	--

or Perm. Resident Card (acceptable alternative):

--	--	--	--

Refugee Travel Document.
Date of issuance: _____; Refugee country: _____

U.S. Certificate of Naturalization.
Print first four digits of CIS Reg. No.:

--	--	--	--

U.S. Certificate of Citizenship.
Date of issuance: _____; Place of issuance: _____

Tribal Certificate of Indian Blood.
Date of issuance: _____; Name of tribe: _____

Tribal or Bureau of Indian Affairs Affidavit of Birth.
Year of birth: _____; Place of birth: _____

Signed: _____ Dated: _____