Supplementary Conditions of the Contract for Construction

U.S. Department of Housing and Urban Development

Appendix 20

Article 1 - Labor Standards

Instructions

Whenever only FHA mortgage insurance is involved, use paragraphs (A) and (C) of Article 1 - Labor Standards. Whenever any direct form of assistance (Section 8, Section 202, direct loans, grants etc.) is involved, use paragraphs (A) and (B) and (C) of Article 1 - Labor Standards.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted or insured by the United States of America and the following Federal Labor Standards Provisions are included in the Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance:

A. 1. [B] Minimum Wages. 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 or under the Construction of or Development of the project, will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account (except such pay 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 bonus (if any) due benefits (or cash equivalents thereof) due to their work or payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof, regardless of any subcontractor relationship which may be evidenced to exist between the contractor and such laborers and mechanics. Commissions made (if any) actually earned and not paid, or any benefits or cash equivalents thereof, due to their work or payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof, regardless of any subcontractor relationship which may be evidenced to exist between the contractor and such laborers and mechanics, subject to the provisions of 29 CFR 5.53(a)(1).]

B. [c] Ideological Standards. Laborers and 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 compensation) and wage rates contained under 29 CFR Part 15, as issued by the Department of Labor or by the Department of Labor or the Department of Labor's Office of Management and Budget under OMB Circular No. 1215-0141).

C. The wage rate (including any benefits due) at which an employee is paid for work in a construction or development of the project, to which the contractor is subject to the provisions of 29 CFR 5.53(a)(1) or (c). is subject to the provisions of 29 CFR 5.53(a)(1). The wage rates contained in the wage determination for such laborers or mechanics shall be paid to all laborers or mechanics performing work in the classification under this contract from the first day on which work is performed or on which the contractor is subject to the provisions of 29 CFR 5.53(a)(1). (Approved by the Office of Management and Budget under OMB Circular No. 1215-0141).

D. Where the minimum wage rates prescribed in the Contract for a class of laborers or mechanics includes a bonus or the like, this class of laborers or mechanics shall be entitled to any additional compensation or bonus or to the like, and the Secretary of Labor may require the contractor to pay such additional compensation or bonus or to the like, to all laborers or mechanics performing work in the classification under this contract from the first day on which work is performed or on which the contractor is subject to the provisions of 29 CFR 5.53(a)(1). (Approved by the Office of Management and Budget under OMB Circular No. 1215-0141).

E. Where 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 incurred in providing bonus (or any other similar compensation or benefits) to the laborers or mechanics employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any bonus or other compensation or benefits to the laborers or mechanics employed by the contractor or any subcontractor.

Replaces FHA-2554 W-11. 1 is obsolete.

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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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of default.

Davis-Bacon Act contract.

3. (b) Payrolls and basic records. 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). The 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 thereto), as described in Section 19(b)(2)(B) of the Davis-Bacon Act, daily and weekly hours of work, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1) that the wages of any laborer or mechanic include the amount of any contributions anticipated in providing benefits under a program described in Section 19(b)(7) of the Davis-Bacon Act, the contractor shall maintain records to show that the commitment to provide such benefits has been honored, that the plan or program is financially sound, 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 as approved under approved programs shall maintain records showing the names of the apprentices or trainees, the beginning and ending dates of their participation, and the period during which their wages were paid.

(Authorized by the Office of Management and Budget under OMB Control Numbers 1210-0140 and 1210-0171.)

(b) (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor shall submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission in HUD or its designee. The payrolls shall be submitted in a manner prescribed by either or both of the following:

(1) The payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(6) and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the project during the payroll period has been paid the full weekly wages earned, without rebates, either directly or by check, and that no deductions have been made either directly or indirectly from the pay earned, other than permissible deductions as set forth in 29 CFR Part 5.

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

(4) That the weekly submission of a properly executed certification set forth on the reverse side of Ombuds Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by paragraph 4.3.2(b) of this section.

The certification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1914 of Title 18 and Section 231 of Title 31 of the United States Code.

(5) The contractor or subcontractor shall make the records required under paragraph 4.3.1(b) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension or 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 Part 5.12.

4. (b) Apprentices and Trainees. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered on the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll as 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 locally negotiated area in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate specified in the contract'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 journeyman's hourly rate specified in the applicable wage determination. Apprentices will be paid fringe benefits in accordance with the provisions of the apprenticeship program. Any program that does not specify known benefits for apprenticeshipt must be paid 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 classification, fringes will be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) 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 program 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's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainees program. If the trainee program does not specify fringe benefits, trainees must 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. Any employee listed on the payroll at a trainees rate who is not registered in a program approved by the Employment and Training Administration shall be paid not
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less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any tradesman performing work on the job site or in excess of the rates permitted under the requirements 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 determines 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.

Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the applicable wage rate requirement contained in 29 CFR 5.5(a) (1) (through (10) and such other clauses as HUD or the Administrator may adopt, in addition to any other clauses hereinafter contained in 29 CFR Part 5.5, to be added to the contract for the employment of laborers and mechanics. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with the wages and conditions of employment set forth in the contract.

Equal Employment Opportunity. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm in a person or firm ineligible to be awarded Government contracts as defined in Section 3(4) of the Davis-Bacon Act or 29 CFR 5.5(b)(1)(ii) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24. HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

The contractor for making false statements is prohibited under the U.S. Criminal Code, Title 18, U.S.C. "Federal False Statements Prohibitions," as provided in part "Whoever knowingly makes or uses any false, fictitious, or fraudulent statement, representation, or certificate of any matter material in any application for an insured or guaranteed mortgage, shall be fined not more than $50,000 or imprisoned for not more than 5 years, or both." (8) Contract Under Various Acts. As used in this paragraph the terms "laborers" and "mechanics" include workers and their assistants.

The contractor shall be liable to the United States in the case of work done under contract for the District of Columbia or for 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 subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designees shall upon its own motion or upon written request of an authorized representative of the Department of Labor withheld or caused to be withheld, from any moneys payable under contract 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 subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontract the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

C. The Contractor will be required to execute FHA Form No. 2403-A, Contractor's Providing Wage Certificates, as a condition precedent to issuance by the Federal Housing Administration of that extension mortgage loan, or an advance thereof, made or to be made by the mortgagor in connection with the construction of the project.

Article 2 - Equal Employment Opportunity

The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the Construction contract, the clause requiring the contractor to comply with all applicable Federal Government contracts regarding wages and hours for laborers and mechanics, subcontractors, employees, or employees of any Federal program or contract, within the railroad geographic area to which this clause applies, and to ensure that all employees employed by such contractor are paid wages equal to the minimum wage prescribed and any other terms and conditions of employment covered by this clause, including apprenticeship. The Contractor agrees to post in conspicuous places readily accessible to employees and applicants for employment notice of this clause, such notice to contain the words: "Equal Opportunity Employer.

A. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.

B. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.

C. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.

D. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.

E. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.

F. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.

G. The Contractor will not discriminate against any person or applicant for employment because of race, color, religion, sex or national origin.
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 its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

P. 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 procedures 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, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. The Contractor will include the portions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G 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 Secretary of Labor, in consultation with the head of the prime awarding agency, orders to assure equal opportunity for all Americans and non-discrimination in employment as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Secretary of Housing and Urban Development or the Secretary of Labor, the procedures established by the United States shall be utilized to resolve such litigation to protect the interests of the United States.

H. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in construction assistance work. Provided, That if the applicant is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

I. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clauses and the rules, regulations, and orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that its books, records, and accounts will be open to inspection by the administering agency in the discharge of the agency's primary responsibility for securing compliance.

J. The applicant further agrees that it will refrain from entering into any contract in which any provision has been made to subcontract the work of this contract to any person or firm, who shall not be in compliance with the equal opportunity clause of this contract, and that it will refrain from hiring any non-compliant person for any purpose whatsoever.

Sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part 1, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Terminate, suspend, or cease doing business with it, or in part, this contract; or refuse to extend any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant and refer the case to the Department of Justice for appropriate legal proceedings.

Article 3 - Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

(Applicable to Section 236 projects, where the estimated replacement cost of the project as determined by the Secretary of Housing and Urban Development exceeds $500,000, and to all projects, including Section 236 projects, regardless of estimated replacement cost, receiving rental supplement assistance under Title I, Section 101 of the Housing and Urban Development Act of 1986.)

A. The work to be performed under this contract is on a project located in a census tract where the median income of families is below 80% of the median income of families in the United States.

B. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.

C. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.

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J. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.

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W. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.

X. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.

Y. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.

Z. The work to be performed under this contract is on a project located in an area where the median income of families is below 80% of the median income of families in the United States.