OBSOLETE

U.S. Department of Transportation
Federal Aviation Administration

Advisory Circular

Subject: LABOR REQUIREMENTS FOR THE AIRPORT IMPROVEMENT PROGRAM (AIP)	Date: 10/19/83 Initiated by: APP-510	AC No: 150/5100-6C Change:

1. PURPOSE. This advisory circular (AC) encompasses the basic labor and associated requirements for the Airport Improvement Program (AIP). It is intended for sponsors using program assistance and for contractors and subcontractors working on projects under the program.

2. CANCELLATION. AC 150/5100-6B, Labor Requirements for the Airport Development Aid Program (ADAP), dated September 10, 1979, is cancelled.

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Cancelled by AC 150/5100-6D (10-15-86)

CONTENTS

1. INTRODUCTION.

a. Basic Compliance Responsibilty. Reorganization Plan Number 14 of 1950 authorizes the Secretary of Labor to prescribe appropriate standards, regulations and procedures pertaining to labor standards enforcement and to make such investigations concerning compliance with and enforcement of such standards as deemed desirable. However, the actual performance of enforcement activities, normally including the investigation of complaints of violations, is the duty of the Federal Aviation Administration (FAA) as it applies to Airport Improvement Program (AIP) projects. Specific responsibilities are:

(1) Federal Aviation Administration (FAA). The FAA is responsible for the administration and enforcement of the Davis-Bacon Related Act labor standards requirements of the Airport and Airway Improvement Act of 1982, as amended; the Copeland "Anti-Kickback" Act (responsibility extends only to inclusion of the contractual provisions and requiring a sponsor to report all suspected violations to the FAA); and the Contract Work Hours and Safety Standards Act (CWHSSA) which is Title I of the Work Hours and Safety Act of 1962 (except Section 107).

(2) Department of Labor. The Department of Labor is responsible for the enforcement of the Fair Labor Standards Act (FLSA)in the non-Federal sector, the Walsh-Healey Public Contracts Act (PCA), the McNamara-O'Hara Service Contract Act (MOSCA), and Section 107 of the CWHSSA. All other responsibilities pertaining to the Copeland "Anti-Kickback" Act not reflected for the FAA above are the responsibility of the Department of Labor.

b. Contract Coverage and Investigations. Construction contracts subject to the Davis-Bacon and Related Acts (DBRA) are also subject to the FLSA which has almost total coverage in the construction industry. Similarly, the CWHSSA applies to most service contracts under MOSCA. AIP construction contracts for which the FAA has enforcement responsibility are also covered by laws for which the Department of Labor has basic enforcement responsibility. Economy to the Government and less trouble often have been achieved by having one Federal department or agency conduct concurrent investigations for compliance and enforcement of all labor standards applicable to a contract (see appendix 2 for contract clauses). The Department of Labor includes the labor requirements that pertain to the AIP under 29 Code of Federal Regulations (CFR) Part 5, subtitle A.

2. BACKGROUND.

a. Davis-Bacon Act (DBA). This Act was effective on March 3, 1931 and requires payment of prevailing wages and fringe benefits to laborers and mechanics employed on the construction of public buildings of the United States and the District of Columbia by contractors and subcontractors. This Act, as written, does not apply to the Airport Grant Program; however, Section 515 of the Airport and Airway Improvement Act of 1982 extends its coverage to all construction contracts in excess of $2,000 for work on projects for airport development approved under the program. Section 515 states, in part, that "such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for work." Award of contracts should be conditioned upon acceptance of the wage determination.

b. Work Hours Act of 1962. This Act was effective on August 13, 1962, to establish standards for hours of work and overtime pay of laborers and mechanics employed on work accomplished under contract for, on behalf of, or with the financial aid of the United States, any territory, or the District of Columbia. The Act stipulates that 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 laborer or mechanic, in any workweek in which employed on such work, to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek except as provided by the Act. This Act, like the DBA and the Copeland "Anti-Kickback" Act, applies to all AIP contracts in excess of $2,000 (Sections 103 and 107 of the CWHSSA requirements also apply to other contracts in excess of $2,500) which involve the employment of laborers and mechanics. The Act was amended on August 9, 1969, to promote health and safety in the building trades and construction industry in all Federal and Federally-financed or Federally-assisted construction projects. The amendment changed the title of the Act to "Work Hours and Safety Act of 1962" and its Title I to "Contract Work Hours and Safety Standards Act." The Department of Labor has enforcement responsibility for Section 107 of the Act, but the sponsor must assume responsibility for safety surveillance. The basic Act does not apply to contracts for transportation by land, air or water, transmission of intelligence, the purchase of supplies or materials or articles ordinarily available in the open market, or to work subject to the provisions of the PCA.

c. Copeland "Anti-Kickback" Act. This Act was effective on June 13, 1934, and applies to construction-type contracts. This Act declares it a criminal offense for any person to make unauthorized deductions, to exact rebates from wages paid to any person employed by any contractor or subcontractor engaged in the construction, prosecution, completion or repair financed in full or in part by loans or grants from a Federal agency. Contractors and subcontractors are required to submit weekly certifications of compliance. Some exceptions are made to the Act's requirements as detailed by the Secretary of Labor's regulations. This Act, like the DBA, applies to construction contracts in excess of $2,000. Sponsors should ensure that appropriate clauses are included in all contracts subject to the requirements of 29 CFR Parts 3 and 5.

d. Fair Labor Standards Act. This law was enacted in 1938 and construction contracts subject to the DBRAs are also subject to this Act. The labor standards provisions of this Act do not constitute a part of the provisions for AIP contracts. However, the Act requires payment of the Federal minimum wage to all employees engaged in interstate commerce or the production of goods for interstate commerce; and almost all employees in AIP construction, other than certain State and local public employees, would also be covered by this Act. The FAA has no enforcement responsibility in regard to this Act; however, other labor enforcement activity may reveal violations of this Act. Such apparent violations should be brought to the attention of the Department of Labor by the sponsor through the FAA.

e. Occupational Safety and Health Act of 1970. This Act is often referred to as the Williams-Steiger Act. It applies to businesses affecting interstate commerce and thus is not limited to government contractors. The responsibility for establishment and enforcement of health and safety standards required by the Act is vested in the Department of Labor (see 29 CFR 1910).

3. DEFINITIONS

a. Site of Work. In applying the contractual clause requirements of 29 CFR 5.5(a) (see appendix 2), the following definition of "site of work" should be used:

(1) General. The "site of work" is limited to the physical place or places where the construction called for in the contract should remain when work on it has been completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of proximity. For example, if a small office building is being erected, the "site of the work" should normally include no more than the building itself and its grounds and other lands or structures "down the block" or "across the street" which the contractor or subcontractor uses in the course of his performance on the particular contract. In the case of larger contracts, such as for an airport or a dam, the "site of the work" is necessarily more extensive and includes the whole area in which the contract construction activity takes place. Except as provided in paragraph (2) below, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Once the limits of the "site of work" have been determined, the wage determination is applicable only to those mechanics and laborers employed by a contractor or subcontractor within such limits (that is, upon the "site of work"), including drivers who temporarily leave the "site" to transport materials and equipment used in the course of contract operations.

(2) Exclusions. Not included in the "site of work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or Federally-assisted contract or project. This is so even though mechanics and laborers working at such an establishment may repair or maintain machinery used in contract performance or make doors, windows, frames or forms called for by the contract while continuing normal commercial work. Regardless of the activities performed at such establishments, the Department of Labor wage rate determination does not apply because they do not constitute the "site of the work." However, if such mechanics or laborers are required to go to a place which is the "site of the work" to perform activities on the contract there, the Department of Labor wage rate determination is applicable for the actual time so spent, not including travel. NOTE: Revised regulations published by the Department of Labor on 4/9/83 define "site of work" at 29 CFR 5.2(l) with respect to contracts entered into due to IFB's issued or negotiations concluded on or after 6/28/83. Under the revised regulations, the above definition is modified to also exclude from the "site of work" fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site. Such permanent, previously established facilities are not a part of the "site of work," even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(3) Material Suppliers Versus Subcontractors. Contracts with bona fide material suppliers or with manufacturers to produce, supply, or deliver items to the "site of the work" for use in the construction activities are not subject to DBRAs nor is transportation by common carrier over routes. However, if such a materialman, manufacturer or carrier undertakes to perform a contract, or some part of a contract as a subcontractor, the mechanics and laborers employed at the "site of the work" are subject to the Department of Labor wage rate decision in the same manner as those employed by any other contractor or subcontractor, as provided in (1) and (2) above.

b. Wage Determination. This includes the original Department of Labor wage determination and any subsequent determinations modifying, superseding, correcting or otherwise changing the provisions of the original determination issued prior to the award of the construction contract. Such a determination should take one of the two forms that follow:

(1) General Wage Determination. Whenever the wage patterns in a particular area for a specific type of construction are well established and it is anticipated that there will be a large volume of procurement in that area for the type of construction, the Department of Labor may publish a general wage determination in the Federal Register. If there is a general wage determination applicable to the type of construction work involved, it may be used without notifying the Department of Labor, provided that questions concerning its applicability shall be referred to the Department.

(2) Project Wage Determination. Whenever work on a project or contract is to be performed in an area which is not covered by a general wage determination, a project determination must be obtained by submitting a "Request for Determination and Response to Request" form (Standard Form (SF) 308) to the Department of Labor through the FAA (if sponsor prepares). A wage determination issued in response to such a request applies only to the project or contract for which it was requested and may not be used for any other work or project.

c. Prevailing Wage Rate. Such a rate for each classification of laborers and mechanics which the Department of Labor regards as prevailing means:

(1) Majority. The rate of wages paid to the majority of those employed in that classification in construction on similar projects in the area during the period in question.

(2) Less than Majority. In the event that there is not a majority paid the same rate, then the average of the wages paid, weighted by the total employed in that classification.

d. Apprentice.

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

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

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

f. Laborers and Mechanics. In general, the term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature as distinguished from mental or managerial. (See 29 CFR 5.2(m).)

g. Contract. This means any contract within the scope of labor standards provisions (see 29 CFR 5.2(h)).

4. AIP LABOR REQUIREMENTS.

a. Minimum Wages. The Airport and Airway Improvement Act of 1982, as amended, in Section 515 covers minimum rates of wages.

b. Veterans Preference. The provisions of Section 515 of the AAIA provide that in the employment of labor (except in executive, administrative and supervisory positions) preference is to be given to individuals who have served in the military service of the United States and who have been honorably discharged from such service. This preference applies only to persons available and qualified to perform the work involved.

5. DAVIS-BACON ACT REQUIREMENTS.

a. Wages and Fringe Benefits.

(1) Wages. The term "wages" means the basic hourly rate of pay, contributions made by a contractor or subcontractor to a third person due to a bona fide fringe benefit fund, plan, or program, and costs reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics. (See 29 CFR 5.5(p) for a more complete definition.)

(2) Wage Rates. When a minimum wage rate decision of the Secretary of Labor is required to be included in the contract documents, the labor provisions in appendix 2 must be physically included in each construction contract. These provisions cover the contract requirements of the DBA, the Copeland "Anti-Kickback" Act, CWHSSA, and the Regulations of the Secretary of Labor. When a minimum wage rate decision is not required to be included in a contract, the provisions of appendix 2, paragraphs 1 and 2, as indicated in the introductory paragraphs of the appendix, may be excluded. The provisions of appendix 2, paragraph 3, must be included in all AIP construction contracts involving labor.

(3) Fringe Benefits. Contractors and subcontractors performing work on contracts subject to wage determinations containing fringe benefits must provide the required fringe benefits or pay their cash equivalent to the employee. Official interpretations of the fringe benefit provisions of the DBA are available in Subpart B of 29 CFR Part 5.

b. When Minimum Wage Rates Should be Used.

(1) Competitive Bid Contracts. AIP construction contracts in excess of $2,000 awarded under competitive bid procedures will include the applicable minimum wage rates.

(2) Negotiated Contracts. When it is determined to be in the best interest of the project, the FAA may authorize the sponsor to award a contract by negotiation. Such contracts in excess of $2,000, other than owner removal, will include the appropriate minimum wage rates.

(3) Supplemental Agreements. A supplemental agreement covers work which is not within the general scope of the existing contract and which the contractor is not obligated to perform under the terms of the contract. Thus, a supplemental agreement is a separate contract and requires execution by both parties with the same formality as any other contract. A new wage determination is required for each supplemental agreement involving more than $2,000 unless it involves work under a project for which a wage determination was issued and has not expired at the time of award of the supplemental agreement. It is also necessary to include any modifications, supersedeas decisions, or corrections to the original wage determination which may be applicable and in effect at the time of award of the supplemental agreement.

c. When Minimum Wage Rates Are Not Required.

(1) Owner Removal Contracts. Minimum wage rates and labor standards provisions do not normally apply to owner removal contracts. However, negotiated contracts such as those between a sponsor and a utility company to install, remove, or relocate service lines owned by the sponsor are not owner removal contracts; and if they exceed $2,000, they are subject to the minimum wage provisions.

(2) Sponsor Force Account. The requirement for minimum wage rates applies only to construction work by contract; therefore, no minimum wage rates are needed for construction by sponsor force account. Wage rates are not needed for operators furnished with rented equipment (when no construction contract is involved).

(3) Change Order. A change order is a written order by the sponsor to the contractor, based on a recognized right or rights reserved in the contract, which makes a change in the design, drawings, or specifications of the contract within the general scope as opposed to a "Supplemental Agreement" as discussed above. No new wage determination is required to cover the work involved in the change order.

d. Wage Determinations.

(1) Area Covered by Wage Determinations. The "area" covered in determining wage rates under the BDRA means the city, town, village, county, or other civil subdivision of the state in which the work is to be performed (29 CFR 1.2(b)). Generally, the Secretary of Labor establishes wage determinations from data obtained from the county in which the AIP project is located.

(2) General Wage Determination. This type of a wage determination is normally published in the Federal Register for the use of more than one Federal requirement and contains no expiration date. All actions modifying this type determination are also published in the Federal Register. Those published less than 10 days before opening of bids are effective unless the FAA finds there is not sufficient time in which to notify bidders of the modification. This type of a wage determination, when not specifically excluding, applies to and should be used for all FAA projects (resulting contracts) in the geographical area for the appropriate type of construction covered by the determination. The appropriate FAA Airports field office should either furnish or be available to assist a sponsor in deciding which wage determination to use. A project wage determination should not be requested for any project for which there is an applicable general wage determination. The "Request for Determination and Response to Request" form (SF 308) is used strictly to request a project determination.

(3) Project Wage Determination. This type of a wage determination is issued by the Department of Labor to be effective for 180 calendar days from the date of issuance. The wage determination must be used during the period of its effectiveness or it is void. All actions modifying an original project wage determination prior to the award of a contract for which the wage determination was requested are effective including those received less than 10 days before bid opening unless the FAA finds that there is not a reasonable time in which to notify bidders of the modification. A modification in no case is to continue beyond the effective period of the determination to which it relates. A project wage determination is obtained by the sponsor, through the FAA, from the Depatment of Labor. It applies only to the project for which requested and issued and may not be used for any other work. A complete description of work should be furnished with the SF 308 request (see appendix 1).

e. Wage Determination Selection. The FAA and/or sponsor are normally required to select the wage determination (schedule of classification and rates applicable to the various types of construction, e.g. heavy, highway, building or residential) to be applicable to the work since the selection can best be made by someone familiar with the practice prevailing in the area. Sponsors may wish to discuss the selection with the FAA local Airports Office to insure their (the sponsor's) awareness of periodic guidance from the Department of Labor on schedule selection.

(1) Project Wage Determination.

(i) When and How to Request. If there is no general wage determination applicable to the project, a project wage determination should be requested by preparing a "Request for Determination and Response to Request" SF 308. This form may be obtained from the local FAA Airports field office.

(ii) Actual Preparation (See appendix 1). The request (SF 308) should be prepared by the FAA and/or sponsor at least 60 days prior to advertising for bids or beginning negotiations for any contract. The completed request (original plus one copy) should be sent by the sponsor to the appropriate FAA Airports field office. Normally, the Department of Labor takes a minimum of 30 days to issue a determination.

(iii) Use and Special Situations.

(A) Valid Determination. When such a wage determination, usually the initial determination, is issued in response to a "Request for Determination," SF 308, it may be used in a contract for all of the project work or for just part of the project work. It may be used for all prime contracts and for supplemental contracts or agreements during the 180-day period of its validity. It is necessary to include any modifications, supersedeas decisions or corrections to the determination.

(B) Expiration. If a project wage determination expires before all work under the project is placed under contract, it is necessary to obtain a new determination for use in the contract for the remaining project work.

(C) New Determination Before Expiration of Old. When a new determination is effective before an existing determination for the same work expires, the new determination should be incorporated in the contract if the contract has not been awarded.

(D) Expiration After Bid Opening, But Before Award. If it appears that a project wage determination may expire between bid opening and award, the sponsor should so notify FAA and a new wage determination will need to be requested. When due to unavoidable circumstances, the determination expires before award and after bid opening, the Administrator, Wage and Hour Division, based on a written finding to that effect (unavoidable) by the FAA or on an individual basis, may extend the expiration date of a determination. Such an extension is based on the finding that it is necessary and proper in the public interest to prevent injustice or undue hardship, or to avoid serious impairment in the conduct of Government business. If a sponsor's position is that the determination expired before award and after bid opening due to unavoidable circumstances, the sponsor is required to submit proof of the facts to support the position. Extension of an expiration date is not favored by the Department of Labor and the need for such an extension should be avoided. Normally, close monitoring of bid opening dates in relation to expiration dates of wage determinations should allow ample time to request and obtain a new determination which is valid at bid opening and contract award.

(2) General Wage Determination. Usually, an AIP project includes only one type of construction to which only one wage determination applies. Schedules or wage rates in a general wage determination which do not apply to the construction in the project should not be included in the contract. However, caution should be exercised so that all classifications which are required to perform the work under the contract are included. All other information in the decision, including all footnotes, references and remarks pertaining to the applicable rates should be incorporated in the contract specifications as part of the wage determination. If

a contract has not been awarded within 90 days after bid opening, any modification published in the Federal Register prior to award of the contract shall be effective unless the FAA requests and receives an extension of the 90-day period from the Department of Labor.

f. Modification of Wage Determinations (General or Project). The Department of Labor may modify any wage determination before the award of a contract or contracts for which it was sought or in which it is to be used. In general, a modification shows changes affecting an existing wage determination. The changes may be additions, deletions of classifications, increases or decreases in wage rates and/or fringe benefits, or a change in the expiration date of the basic determination. Such modifications published after contract award are not effective.

(1) Incorporation. If a modification is effective, it should be incorporated in the invitation for bids by issuing an addendum to the specifications or otherwise. Failure to include an effective modification in the bidding documents is a violation of both FAA and Department of Labor regulations and can result in suspension of Federal assistance until corrective action is taken. Modifications received by FAA, in case of a project wage determination, or published in the Federal Register, in the case of a general wage determination, less than 10 days before bid opening are effective unless the FAA determines that there is not reasonable time to notify the bidders.

(2) Superseding a Determination. Whenever there are numerous changes to be made to wage rates, the Department of Labor issues a determination superseding an existing determination rather than modifying it. Its use and effectiveness is the same as that of a modification.

(3) Letter of Inadvertence. Upon its own initiative or at the request of the FAA, the Department of Labor may correct a wage determination included in a contract subject to the minimum wage provisions when it is found that such a determination contains clerical errors. The Department of Labor issues a letter of inadvertence to retroactively correct the wage determination. Such a correction bears the date of issuance and the date and number of the wage determination it corrects. This action differs from a modification in that it corrects errors due to transposition of rates, classifications, figures or other clerical slips in processing wage schedules. It does not represent a change in judgment. Corrections to wage determinations containing clerical errors must be included in any bid specifications containing the wage determinations, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

g. Incomplete Wage Determinations (General and Project). If a wage determination issued by the Department of Labor does not contain wage rates for all the classifications requested, it may be assumed that the Department of Labor does not have sufficient wage data on which to base a rate for the omitted classifications. The following alternate courses of action are available for use when this happens:

(1) Obtain a Modification Prior to Bid Opening. A sponsor may submit a request to the local FAA Airports office for review and transmittal to the

Department of Labor for a modification to provide the rates for the omitted classifications. Such a request should be accompanied by wage data of the kind set forth in 29 CFR 1.3(b) which supports a rate as the rate prevailing in the area for the needed classifications (see 5i(4)(b) that follows). The Department of Labor normally requires at least 30 days to issue a modification; therefore, a determination should be reviewed initially upon receipt so that the request for additional classifications can be made in time to include them in the advertised specifications.

(2) Use of Incomplete Wage Determination (Prior to Bid Opening). If an effective modification providing the rates for needed classifications cannot be obtained, the incomplete wage determination can be incorporated in the advertised specifications with a notification to bidders (by addendum, if necessary) as follows:

> Notice to Bidders, Wage Rate Determination. The wage rate determination of the Department of Labor incorporated in the advertised specifications does not include rates for the requested classifications listed below. The bidder is responsible for ascertaining the rates payable for such classifications and whether area practice requires their use in accomplishing the work. No inference concerning area practice is to be drawn from their omission. Further, the omission does not, per se, establish any liability to the Government for increased labor costs resulting from the use of such classifications (list the classifications for which no wage rates are given).

h. Awarded Contracts Containing No Wage Determination or an Expired Determination. If a contract has been advertised and awarded which includes no wage determination, an obsolete determination or a determination that is otherwise not applicable to the contract work, there are two basic courses of action a sponsor may take. First, if there is available a current applicable determination as of the date of award and there has been no work accomplished or irreversible costs incurred, the proposal should be readvertised including the current determination. If some of the contract work has been accomplished or irreversible costs incurred by the contractor, the sponsor and the contractor should agree (in writing) to the use of the proper determination. If the contractor is going to incur additional costs as a result of higher minimum wage requirements, it may be necessary for the sponsor to negotiate with the contractor and include an equitable adjustment of the contract price. However, in the specific case where the Department of Labor may have inadvertently furnished a determination that would not apply to all or any part of the work and this fact later came to light, a contract can be modified to include the applicable rates by supplemental agreement or change order and an equitable adjustment be made to the contract price. Secondly, if there is no applicable current determination, it is necessary for the sponsor to obtain, through the appropriate FAA Airports field office, an advisory opinion from the Department of Labor. When the opinion is received by the sponsor, the procedure above should be required before use of the advisory opinion as a part of the contract. The advisory opinion informs the FAA, the sponsor and the contractor of the wage rates prevailing in the area as of the date of award of a contract (not the date the contract was executed). Such an advisory opinion is issued upon

request (SF 308) of a sponsor. The SF 308 should include above the title of the form "REQUEST FOR ADVISORY OPINION -- CONTRACT AWARDED" (insert award date, not the execution date).

i. Classification. Only laborers and mechanics are included in wage determinations. Clerical, supervisory or nonmanual workers are excluded. A watchman, for example, is not covered under Davis-Bacon if he/she does no manual work.

(1) Basic Classification. The classification of a workman must describe his duties or the work he actually performs and must conform to area practice. Therefore, classifications included in wage determinations are those which are recognized and used in the area for the type of work described. For instance, in one area a workman may be classified as "mason tender" or "plasterer tender," while in another area a workman performing the same duties may be classified as "hod carrier." Engineers should be familiar with the classification of workmen in the location where the work is actually to be performed and should use this knowledge in applying the wage determination.

(2) Intermediate Classification.

(i) Exclusion of Such Classifications. Normally, a wage determination should reflect only the basic journeyman classification and should not permit the breaking down of a classification into the intermediate (sub) classification(s) based on a portion of the functions generally performed by the craft, unless the intermediate classification has been used and is recognized by the Department of Labor in the area where the work is to be performed. For example, Labor will not usually issue a wage rate for workmen classsified as "sheetrockers," "wallboard installer," "sheathers," or "carpenters, rough." The duties of such workmen generally are among the duties performed by "carpenters" Workmen performing such duties should be so classsified on the contractor's payroll and paid accordingly.

(ii) Sponsor Request. If a sponsor requests an intermediate classification which is not included in the wage determination, it is necessary to submit evidence sufficient to give the Department of Labor a basis for establishing a rate for use of the classification.

(3) Contractor Use. Only those classifications included in the wage determination or any modification may be used on AIP assisted construction contracts except as provided in (4) below. Laborers and mechanics should be classified on the contractor's payrolls and be paid not less than the minimum wage rates. Sponsors should encourage contractors to classify their employees according to the classification furnished by Labor. When sponsors/contractors are in doubt as to a proper classification or type of construction rates to be used, it should be discussed with the local FAA Airports field office. If the problem cannot be resolved, the sponsor should submit the problem with supporting information through the FAA to the Department of Labor for resolution.

(4) Additional Classifications After a Contract is Awarded. The Department of Labor requires that any class of laborers and mechanics not listed in

the wage determination and which is to be employed under the contract be classified or reclassified conformably to the wage determination. Any additional or reclassification actions will be approved only when the following criteria have been met: the work to be performed can be fitted into a classification contained in the applicable wage determination; the classification is utilized in the area by the construction industry; and the proposed wage rate, including fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(i) Reclassification. If, after award of a contract, it is determined that a different classification and wage rate are required, the sponsor and the contractor may agree upon a classification and rate that conform to, but need not be identical with, the rate for the most comparable classification shown in the wage determination. The agreement should be in writing and provide for payment of the rate thus established for work under the contract. The sponsor should furnish the agreement to the appropriate FAA Airports field office for approval and transmittal to Labor.

(ii) Additional Classification. If any employees cannot be reclassified, the sponsor and the contractor, with FAA approval, determine the proper rates to use. It is necessary to use prevailing area practice, bargaining agreements and experience in determining rates. The agreement on which rates to use should be in writing and provide for payment of the rates agreed upon for work accomplished under the contract. A sponsor should send the agreement to the appropriate FAA Airports field office accompanied by two or more of the following types of information supporting the rate as prevailing in the area. The Department of Labor will approve, modify, or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer that additional time is necessary.

(A) Statements. Furnish statements from the appropriate local union, building trades council, or contractors' associations reflecting wage rates paid on projects including names and addresses of contractors and subcontractors, locations, approximate costs, dates of construction, types of projects and number of workers employed in each classification on each project and the respective wage rates. Include statements of local contractors reflecting number of workers employed at the rate agreed upon for the particular classification;

(B) Agreements. Signed collective bargaining agreements;

(C) Public Construction. Wage rates determined for public construction by state and local officials based on prevailing wage legislation;

(D) State Agencies. Information furnished by state agencies;

(E) Payrolls. Copies of payrolls of similar projects in the same location;

(F) Wage Determinations. Copies of any wage determination incorportated in a recent public contract in the area containing a classification for similar work.

j. Posting of Wage Determinations. A sponsor should have the contractor(s) post in a prominent place for examination by laborers and mechanics the wage rate information bulletin poster, "Notice to Employees" (Wage and Hour (WH) Publication 1321), and the applicable wage determination(s). Any additional classification and wage rates which are conformed should be added when issued. This information should be posted during the entire life of the contract. Copies of WH Publication 1321 may be obtained from the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

k. Invitation for Bid Requirements. For contracts of more than $2,000, sponsors should include the applicable wage determination of the Department of Labor in the invitation for bids or proposed contract. When a wage rate determination is obtained pursuant to a specific request (SF 308), the copy of the determination included in the negotiated or advertised specification should be a verbatim copy of that received from the Department of Labor.

l. Contractor Certification as to Labor Provisions. A contractor's certification that "there has been/will be full compliance with all labor provisions in the contract and all subcontracts made under the contract" should be submitted initially to the appropriate FAA Airports field office. This can be considered accomplished with the execution of the construction contract. In the case of a substantial dispute as to the nature of a contractor's or subcontractor's obligation under the labor provisions of the contract or subcontract, an additional phrase, "except insofar as a substantial dispute exists with respect to these provisions," is required. It should otherwise be considered accomplished with the execution of the construction contract as indicated above. This does not mean that a contractor does not have to comply with the contractual provisions (of contracts in excess of $2,000) contained in 29 CFR 5.5(a)(3)(ii) which indicates that the contractor must submit weekly a copy of the payroll to the sponsor and that the wage rates contained therein are not less than those determined by the Secretary of Labor, etc.

m. Apprentice and Trainee Programs. See the contractual provisions as reflected in appendix 2 and 29 CFR 5.5 which describes the programs and requirements. In addition, see 29 CFR 5.16 which covers training plans approved or recognized by the Department of Labor prior to August 20, 1975; 29 CFR 5.17 which tells how and when Labor is to withdraw approval of a training program.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS.

a. General. This Act requires payment to laborers and mechanics (including watchmen and guards) employed on AIP construction projects in excess of $2,000 at not less than one and one half times the basic rate of pay for all overtime hours worked in a workweek. In addition to other types of contracts specified in the Act, Section 103(a) specifies that the Act applies to any contract which may require or involve the employment of laborers and mechanics if such contract is one for work financed in whole or in part by grants from the United States or any agency or instrumentality under any statute of the United States providing wage standards for such work. The provisions of appendix 2, paragraph 2, must be included in all AIP contracts subject to the CWHSSA.

b. Payment of Overtime. Section 102(a) of the Act provides that the wages of every laborer and mechanic (including watchmen and guards) employed by any contractor or subcontractor in his performance of work on any contract of the type specified in Section 103 of the Act is to be computed on the basis of a standard calendar workday of eight hours and a standard workweek of 40 hours. Work in excess of a standard workday or workweek is permitted at a rate of not less than one and one half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in the workweek, as the case may be.

c. Working Conditions. Section 107 of the Act provides that bid proposals for Federally assisted construction contracts covered by the section shall include the language as reflected in appendix 2, paragraph 2e, of this AC. 29 CFR 1926.11(b) states that to be covered by Section 107 of the Act, a contract must be one which is entered into under a statute subject to Reorganization Plan No. 14 of 1950 and is for construction, alteration, and/or repair, including painting and decorating. It is noteworthy that 29 CFR 1926.13(b) states that DBA limits minimum wage protection to laborers and mechanics employed directly on the "site of the work" (see 29 CFR 5.2(l)). There is no comparable limitation in Section 107 of the CWHSSA (see 29 CFR 1926 for Safety and Health Standards and Compliance Requirements). In no case should a prime contractor be relieved of the overall responsibility for compliance with 29 CFR 1926.

d. Nonapplication of the Act. This Act does not apply to:

(1) Supplies. The purchase of supplies or materials or articles ordinarily available in the open market; or

(2) Construction. Construction of $2,000 or less.

7. COPELAND "ANTI-KICKBACK" ACT REQUIREMENTS.

a. General. The requirements of this Act apply to any contract which is subject to the Federal wage standards and which is for construction, prosecution, completion, or repair of public works or buildings, or works financed in whole or in part by loans or grants of the United States. All covered employees are to be paid at least weekly and should have complete freedom of wage disposition.

b. Weekly Statement. Each contractor or subcontractor should furnish within seven days after the regular payment date of the weekly payroll period, to the sponsor or his agent, a copy of all payrolls accompanied by a statement as to wages paid employees during the preceding weekly payroll period. The sponsor or his agent should then certify to the local FAA Airports office that the report was received and acceptable. This statement (not certification) should 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. The statement should be furnished on Form WH 348, "Statement of Compliance," or on an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)," or on any form with identical wording. All deductions should be listed in the weekly statement. Sponsors may obtain pads of 100 of the forms, each of which includes instructions for use, from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the appropriate FAA Airports office.

c. Preservation of Weekly Payrolls. Each sponsor should retain the weekly payroll records for a period of three years from the date of completion of the contract. Such records are to be available at all times for the inspection by authorized representatives of the FAA and the Department of Labor.

d. Payroll Records. Payroll records should include the following:

(1) Contractor. The contractor's name, contract (project) number, title and the payroll period covered;

(2) Employee. The employee's full name, address and social security number, except:

(i) Name. The full name and social security number need only appear on the first payroll on which the employee's name appears;

(ii) Address. The employee's address need appear only on the first payroll unless there is a change of address;

(3) Classifications. Some contractors wish to use codes to replace wage classifications on payrolls. This is acceptable if the contractor submits a copy of the classification codes to be used on the project to the sponsor who, in turn, should furnish a copy to the FAA Airports field office. A copy can, as an alternative, be submitted from the contractor directly to the FAA Airports field office;

(4) Rates. The employee's hourly wage rate(s) and, when applicable, overtime rates;

(5) Hours. Daily and weekly hours worked in each classification for each employee including actual overtime hours worked (not adjusted);

(6) Deductions. Itemize deductions;

(7) Wages. Include gross earnings, net earnings and amounts furnished for fringe benefits for each employee.

e. Payroll Deductions. Any payroll deductions should be accomplished as provided in 29 CFR Part 3.5 (without application to or approval of the Department of Labor) and Part 3.6 (with approval of the Department of Labor). Applications for approval of the Department of labor should comply with 29 CFR 3.7.

8. COMPLIANCE (SEE APPENDIX 4 FOR SPONSOR INVESTIGATIVE STEPS).

a. Enforcement. In considering enforcement of labor requirements on AIP assisted construction contracts, it should be emphasized that each state has its own laws and regulations (or similar guidance) on the nature and application of sanctions for breach of contractual requirements. Such laws are enforced by state and local officials and are often in addition to the required provisions of Federal laws and regulations applicable to such contracts. To assure compliance with the labor standards, the sponsor or the FAA will make whatever investigations are necessary and will include interviews with employees, examination of payroll data,

evidence of fringe benefit plans and payments to the plans, etc. Where underpayments total less than $1,000 and the violations are not willful, the findings and recommendations do not need to be sent to the Department of Labor. Where underpayments total more than $1,000 or where there is reason to believe the violations are willful, a detailed enforcement report will be sent to Labor within 60 days after completion.

b. Liquidated Damages. For liquidated damages under the CWHSSA, if the contractor or subcontractor inadvertently violated the provisions of the Act and the amount of liquidated damages is in excess of $500, the FAA may make recommendations to the Secretary of Labor that the contractor or subcontractor be relieved of liability for such liquidated damages.

c. Debarment. Any firm or person debarred for violation of the Davis-Bacon Act is ineligible to be awarded any contract funded by the AIP. More detail is provided in 29 CFR 5.7, 5.8, 5.9, and 5.12.

9. EMPLOYEE TESTING. The sponsor should insure contractor and subcontractor compliance with 41 CFR Part 60-3, Uniform Guidelines on Employee Selection Procedures. These guidelines apply to selection procedures which are used as a basis for any employment decisions. Such decisions include, but are not limited to, hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, licensing and certification to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the above indicated decisions.

10. PRECONSTRUCTION CONFERENCES. These conferences normally include the FAA, sponsor, authorized representatives of the sponsor and their administrative personnel (if applicable), the prime contractor and subcontractors (also see AC 150/5300-9, "Predesign and Preconstruction Conferences").

a. The Sponsor's Obligation. The sponsor, in respect to labor requirements, should:

(1) Review. Review wage rates and labor provisions;

(2) Additional Classifications. Determine if additional classifications are needed;

(3) Necessity. Explain the necessity for using only the properly authorized classifications;

(4) Requirements. Inform contractors of the full requirements in the case of apprentices and trainees;

(5) Records. Explain the records and the reports required, when required and what should be included;

(6) Deductions. Determine payroll deductions, request a copy of authority for deductions and require that deductions be listed on the weekly statement of compliance;

(7) Stipulations. Explain all labor stipulations, regulations and wage determinations which should be included in contracts/subcontracts;

(8) Sanctions. State the sanctions provided for in the case of willful or aggravated violations;

(9) Assistance. Indicate that Federal assistance may be withheld by the FAA if all the labor requirements are not met;

(10) Omissions. Point out that the contractor is fully responsible for any acts of omission or commission (including subcontracts);

(11) Applicability. Advise of the applicability of the FLSA and the fact that enforcement is to be by the Department of Labor;

(12) Other Provisions. Explain the provisions of the CWHSSA.

b. Conference Purpose. The basic purpose of this type conference is to achieve a general understanding between the sponsor and the contractor of each other's requirements and responsibilities.

c. Outline. Appendix 3 contains an outline that should be furnished each successful bidder and its subcontractors.

11. CONTRACT PROVISIONS. Required labor provisions to be incorporated, as required in AIP assisted contracts and subcontracts, are set forth in appendix 2 of this AC.

12. SPONSOR KNOWLEDGE. Sponsors need to be conversant with applicable laws, practices, or policies and fully understand their relationship to the minimum requirements of the AIP.

13. CONTRACT TERMINATION. See appendix 2 for contractual coverage.

APPENDIX 1. PREPARATION OF STANDARD FORM 308

1. The sponsor or FAA may prepare Standard Form 308 (including classification(s) needed). If the sponsor prepares, it will submit the form to the appropriate FAA field office.

2. The sponsor's engineer, who is familiar with area labor practices, should render assistance to the FAA field office for any questions on labor needs for the form.

3. Craft classifications on the form are a guide and are not all inclusive. Craft classifications recognized by area custom and practice should be included in the wage determinations.

4. Check only the classifications needed to accomplish the described work.

5. Blank spaces are provided for classifications not included. Classifications needed in excess of the blank spaces should be listed on a separate sheet of paper.

6. Do not list either "all classifications applicable" or "entire schedule" as requirements. Specific classifications should be listed.

7. Absence of a requested classification in the wage determination means that the Department of Labor does not have sufficient current wage data from the area on which to base a determination.

8. The Department of Labor can provide an additional classification via a modification provided the request is accompanied by sufficient wage data on which to base the determination (including any available pertinent wage payment or locally prevailing fringe benefit information).

9. The address block to which the determination should be mailed should contain the address of the local FAA field office.

Figure 1. Standard Form 308 (Sample)

U. S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION	REQUEST FOR DETERMINATION AND RESPONSE TO REQUEST	*(Davis Bacon Act as Amended and Related Statutes)*

FOR DEPARTMENT OF LABOR USE

Response To Request

a. ☐ Use area determination issued for this area

_____

_____

b. ☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Requesting Officer (typed name and signature)

(FAA)

Department, Agency, or Bureau	Phone Number
Appropriate FAA Field Office Title and Address	Appropriate FAA Field Office

Date of Request	Est. Advertising Date	Est. Bid Opening Date
(by FAA)	(by FAA/Sponsor)	(by FAA/Sponsor)

Prior Decision Number (if any)	Est. $ Value of Contract	Type of Work
by FAA/Sponsor	☐ Under ½ Mil. ☐ 1 to 5 Mil. ☐ ½ to 1 Mil. ☐ Over 5 Mil.	☐ Bldg. ☐ Highway ☐ Resid. ☐ Heavy

Location of Project (city or other description)

County	State

Address to which wage determination should be mailed. Must be complete and include ZIP Code. (Print or type)

Federal Aviation Administration

Wage Survey by Agency Attached	Wage Survey by Agency In Progress
☐ YES ☐ NO	☐ YES ☐ NO

Description of Work (Be specific) (Print or type)

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

___ Asbestos workers
___ Boilermakers
___ Bricklayers
___ Carpenters
___ Cement masons
___ Electricians
___ Glaziers
___ Ironworkers
___ Laborers, *(specify classes)*
___ _____
___ _____
___ _____
___ _____
___ _____
___ Lathers
___ Marble & tile setters, terrazzo workers
___ Painters
___ Piledrivermen
___ Plasterers
___ Plumbers
___ Roofers
___ Sheet metal workers
___ Soft floor layers
___ Steamfitters
___ Welders—rate for craft
___ Truck drivers
___ Power equipment operators, *(specify types)*
___ _____
___ _____
___ _____
___ _____

Other crafts
___ _____
___ _____

(THIS REPLACES FORMS DB-11 & DB-11a)

STANDARD FORM- 308 JUNE 1972
U.S. DEPARTMENT OF LABOR
(29 CFR) Subtitle A, Part 5

APPENDIX 2. LABOR PROVISIONS -- FOR CONTRACTS

1. Each sponsor entering into a construction contract for an airport development project is required to insert in the contract the following provisions from 29 CFR 5.5 except that contracts for $2,000 or less need not contain the provisions.

a. Mimimum Wages.

(1) All laborers and mechanics employed or working upon the site of the work 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 laborers or mechanics, subject to the provisions of subparagraph a.(4) below; 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 paragraph d. of this clause. 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 a.(2) 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 easily be seen by the workers.

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

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(iii) 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (2)(ii) or (iii) of this paragraph, 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.

(3) 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.

(4) 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

b. 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 work, 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.

c. Payrolls and basic records.

(1) 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. 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 a(4) of this clause 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 costs 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. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(2) (i) 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, spnsor, 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 c(1) above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C.20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215-0149.)

(ii) 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:

(A) That the payroll for the payroll period contains the information required to be maintained under c(1) above and that such information is correct and complete;

(B) That each laborer and 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;

(C) 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 incorportated into the contract.

(iii) 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 c.(2)(b) of this section.

(iv) 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.

(3) The contractor or subcontractor shall make the records required under paragraph c(1) 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.

d. Apprentices and Trainees

(1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary

employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specifiy fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) 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 determiniation 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.

(3) 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.

e. 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.

f. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in paragraphs a. through j. of this contract 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.

g. Contract Termination: Debarment. A breach of the contract clauses in paragraphs a. through j. of this clause and a. through e. of the 2nd clause below may be grounds for termination of the contract, and for the debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

h. 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.

i. 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.

j. Certification of Eligibility.

(1) 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).

(2) 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)

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

2. The following clauses in paragraphs a, b, c, d, and e below, required by the Contract Work Hours and Safety Standards Act, will also be inserted in full in AIP construction contracts in excess of $2,000 in addition to the clauses required by 29 CFR 5.5(a) or 4.6 of Part 4 of Title 29. As used in the following, the term "laborers" and "mechanics" include watchmen and guards.

a. 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 eight hours in any calendar day or 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 eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

b. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph a. above, the contractor or 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 a. above, 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 paragraph a. above.

c. 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 monies 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. above.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs a. through d. and also a clause requiring the subcontractor 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 a. through d.

e. Working Conditions. No contractor or subcontractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) issued by the Department of Labor.

3. In addition to the provisions in 1 and 2 above for contracts in excess of $2,000, the following is to be included in all contracts for work on airport development projects involving labor:

Veteran's Preference. In the employment of labor (except in executive, administrative and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

APPENDIX 3. PRECONSTRUCTION CONFERENCE OUTLINE OF LABOR REQUIREMENTS (FOR SUCCESSFUL BIDDERS)

1. COPELAND "ANTI-KICKBACK" ACT.

a. Wages. Full wages must be paid.

b. Deductions. All deductions from wages must be authorized.

c. Statements. Weekly statements must be submitted by the contractor and all subcontractors for work performed during the preceding payroll period.

2. DAVIS-BACON AND RELATED ACTS.

a. Wages Paid. Wages paid to laborers and mechanics must not be less than the determined hourly wage rates, including fringe benefits, shown in the minimum wage schedule.

b. Classification. Laborers and mechanics must be properly classified and paid according to the work actually performed.

c. When Paid. Laborers and mechanics must be paid not less often than once a week.

d. Posting. The minimum wage scale (schedule) and any supplements must be posted at the project site.

3. WORK HOURS ACT OF 1962, AS AMENDED.

a. Workday. There must be an 8 hour calendar workday; 40 hour standard workweek.

b. Overtime. Contractors and subcontractors must pay one and one-half times the basic rate of pay, exclusive of fringe benefits, for all hours over 8 hours per day or 40 hours per week (all covered employees).

c. Unpaid Wages. There is a liability to workers for unpaid wages.

d. Liquidated Damages. There is a liability to the Federal Government for liquidated damages at $10 per day per employee per violation.

e. Withholding. There is to be a withholding for unpaid wages and liquidated damages.

f. Payment to Workers. The Comptroller General is authorized to make payment to workers for overtime pay directly from withholdings.

g. Appeals. An appeal can be made to the FAA Administrator, the Secretary of Labor, or the Court of Claims within 60 days from the computation, withholding, or final order.

h. Penalty. Intentional violations are a Federal misdemeanor and each violation, upon conviction, is to be punished by a fine of not to exceed $1,000 or by imprisonment for not more than six months or by both.

4. FALSE INFORMATION ACT. The making or use of false statements is a felony.

5. FALSE CLAIMS ACT. The making or using false claims for the purpose of obtaining or aiding to obtain payment or approval of claims against the United States subjects a violator to forfeiture of $2,000 for each violation.

6. SANCTIONS. Violations of these Acts may result in withholding, termination of contract(s), administrative debarment, and/or criminal or civil prosecution.

7. CLASSIFICATION/RECLASSIFICATION.

a. Schedule to Review. The minimum wage schedule should be examined with the sponsor to determine the need for classification or reclasssification of laborers and mechanics.

b. Report. If there is to be any classification or reclassification of laborers and mechanics undertaken, a report must be submitted through the sponsor to the appropriate FAA Airports field office for review and transmittal to the Secretary of Labor for approval.

8. APPRENTICES.

a. Registered Program. Such apprentices must be employed and individually registered in a bona fide apprenticeship program.

b. Ratio. The allowable ratio of apprentices to journeymen in any craft classification should not be greater than the ratio permitted the contractor as to his entire work force under the program.

c. Other Employees. Any employee listed on the payroll at an apprentice wage rate, who is not registered or certified as an apprentice or trainee by the Department of Labor must be paid the wage rate for the journeyman classification of work actually performed.

d. Evidence of Registration. The contractor or subcontractor is required to maintain written evidence of the registration of his program, ratios and wage rates prescribed in the programs, and is required to make such records available for inspection in accordance with 29 CFR 5.5(a)(3)(iii).

e. Apprentice Wage Rate. This rate should not be less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

9. TRAINEES.

a. Registered Program. Except as approved by the Department of Labor prior to August 20, 1975, trainees should not be allowed to work at less than the predetermined rate unless individually registered in a program with prior approval evidenced by formal certification by the Department of Labor.

b. Ratio. The allowable ratio of trainees to journeymen should not be greater than permitted under the plan approved by the Department of Labor. Each trainee must be paid at not less than the rate specified in the approved program for his/her level of progress.

c. Other Employees. Any employee listed on a payroll at a trainee wage rate, who is not registered and participating in a training plan approved by the Department of Labor, must be paid not less than the wage rate for the journeyman classification of work actually performed.

d. Evidence of Registration. The contractor or subcontractor is required to maintain written evidence of the certification of the program, registration of the trainees and the ratios and wage rates prescribed in the program, and is required to make such records available for inspection in accordance with 29 CFR 5.5(a)(3)(iii). If the Department of Labor withdraws approval, the trainees must be paid the applicable predetermined rate for the work performed until an acceptable program is approved.

10. PAYROLLS AND RECORDS.

a. Certified Payroll. Each contractor and subcontractor must submit to the sponsor weekly a certified copy of all payrolls for the previous week.

b. Certification. Each payroll should be accompanied by a statement signed by the contractor or agent indicating that the payrolls are correct and complete and that the wage rates are not less than those determined by the Secretary of Labor and the classifications for each laborer and mechanic are in accordance with the work performed.

c. Submission of Payrolls. The prime contractor is responsible for submission to the sponsor of copies of payrolls of all subcontractors.

d. Records Retention. Payrolls and basic records relating to those payrolls must be maintained during the course of the work and preserved for a period of three years for all laborers and mechanics working at the site of the work.

11. SUBCONTRACTORS.

a. Material Suppliers. Laborers and mechanics employed by a prime contractor or subcontractor are covered by the contract provisions, but employees of bona fide material suppliers are not.

b. Prime Contractor Responsibility. Violations of labor provisions by a subcontractor are the responsibility of the prime contractor.

c. Contract Clauses. The clauses in 29 CFR 5.5 and in appendix 2 of this Advisory Circular must be physically incorporated in applicable subcontracts.

12. VETERANS PREFERENCE. Preference is to be given to qualified individuals who have served in the military service of the United States.

13. WORKING CONDITIONS. Contractors and subcontractors are not to require any laborer or mechanic to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health or safety based on the standards of 29 CFR Part 1926.

14. INSPECTIONS. The contractor and subcontractor are required to allow the sponsor or an authorized representative of the FAA to inspect and review any work or materials used in the performance of the contract.

APPENDIX 4. INVESTIGATIVE STEPS FOR LABOR COMPLIANCE (FOR SPONSOR USE)

The following steps are suggested areas to review in determining if a contractor or subcontractor is properly complying with contractual labor requirements:

1. Examine the contract, wage determination, and posting requirements.

2. Examine the payroll (be sure to include deductions).

3. Examine the basic time and work records.

4. Determine proper apprentice/trainee registration and conformity with apprenticeship and trainee requirements.

5. Check on the use of classifications of laborers and mechanics not listed in the wage determination.

6. Check for proper transcription of payrolls.

7. Determine if proper daily and weekly overtime was paid.

8. Interview employees to verify hours of work, rates of pay, and proper classification.

9. Check on proper disclosure of information to employees.

10. Develop a conclusion to the investigation.

11. Determine if blacklisting or criminal charges could be involved.

12. Develop a report of the investigation and furnish to the appropriate FAA Airports field office.

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