

112-C-122 STATE FUNDED CONTRACT REQUIREMENTS

(Revised 09-01-05)

The Standard Specifications are revised as follows:

SECTION 112, BEGIN LINE 1, DELETE AND INSERT AS FOLLOWS:

SECTION 112 – ~~BLANK STATE FUNDED CONTRACT REQUIREMENTS~~

112.01 General Requirements

The Contractor shall insert in each subcontract all of the stipulations contained herein, and further shall require their inclusion in each lower tier subcontract or purchase order that may in turn be made. These requirements shall not be incorporated by reference. The Contractor shall be responsible for compliance by each subcontractor or lower tier subcontractor with these requirements.

112.02 Payment to Laborers

The rate of wages and fringe benefits for all laborers and mechanics employed on the contract shall be in accordance with the General Decision included in the Contract Information book.

- (a) “Wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include the basic hourly rate of pay for laborers and mechanics plus the amount contributed by the Contractor and its subcontractors for certain fringe benefits.*
- (b) The meaning of “fringe benefits” for purposes of the contract shall be defined by the provisions of the Davis-Bacon Act and the interpretation of the fringe benefits regulations as set forth in 29 CFR 5.20 et seq., which are herein incorporated by reference.*
- (c) The term “laborer” shall include at least those workers, including apprentices and trainees, whose duties are manual or physical in nature, including those workers who use tools or who are performing the work of a trade, as distinguished from mental or managerial. The term shall not include workers whose duties are primarily administrative, executive, or clerical.*

112.03 Payment of Predetermined Minimum Wage

(a) General Requirements

- 1. All laborers employed or working upon the site of the work shall be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account the full amounts of wages and bona fide fringe benefits, or cash equivalents thereof, due at time of payment. The payment shall be computed at wage rates not less than those contained in the General Decision, regardless of any contractual relationship which may be alleged to exist between the Contractor or its subcontractors and such laborers. The General*

Decision shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this section, contributions made or costs reasonably anticipated for bona fide fringe benefits on behalf of laborers are considered wages paid to such laborers subject to 112.03(c)2. Also, for the purpose of this section, regular contributions made or costs incurred for more than one 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 shall be paid the appropriate wage rate and fringe benefits on the General Decision for the classification of work actually performed, without regard to skill, except as provided in 112.03(d) and 112.03(e).

2. *Laborers 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.*

(b) Classification

1. *The Department's contracting officer will require that each class of laborers employed under the contract, which is not listed in the General Decision, shall be classified in conformance with the General Decision.*
2. *The contracting officer will approve an additional classification, wage rate, and its fringe benefits only when the following criteria have been met:*
 - a. *The work to be performed by the additional classification request is not performed by a classification in the General Decision.*
 - b. *The additional classification is utilized in the area by the construction industry.*
 - c. *The proposed wage rate, including all bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the General Decision.*
 - d. *With respect to helpers, when such a classification prevails in the area in which the work is performed.*
3. *The wage rate, including fringe benefits where appropriate, determined pursuant to the requirements herein shall be paid to all*

workers performing work in the additional classification from the first day on which work is performed in the classification.

(c) Payment of Fringe Benefits

1. *Whenever the minimum wage rate prescribed in the contract for a class of laborers includes a fringe benefit which is not expressed as an hourly rate, the Contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the General Decision or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.*
2. *If the Contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of each laborer the amount of all costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. The Department may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.*

(d) Apprentices and Trainees (Programs of the U.S. Department of Labor)

1. Apprentices

- a. *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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Department. A person will be permitted to work as an apprentice if employed in his/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.*
- b. *The allowable ratio of apprentices to journeyman-level employees on the project site in each craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Each employee 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 listed in the General Decision for the classification of work actually performed. In addition, each apprentice performing work on the project site in excess of the ratio permitted under the registered program shall be paid not less than*

the applicable wage rate on the General Decision for the work actually performed. Where the Contractor or a subcontractor 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-level hourly rate, specified in the Contractor's or subcontractor's registered program shall be observed.

- c. Every apprentice shall 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-level hourly rate specified in the General Decision. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices shall be paid the full amount of fringe benefits listed in the General Decision for the applicable classification.*
- d. If the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Department, withdraws approval of an apprenticeship program, the Contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.*

2. Trainees

- a. 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 DOL, Employment and Training Administration, or the Department.*
- b. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Each 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 General Decision for the classification of work actually performed. In addition, each trainee performing work on the project site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the General Decision for the work actually performed.*
- c. Every trainee shall be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a*

percentage of the journeyman-level hourly rate specified in the General Decision. Trainees shall be paid fringe benefits in accordance with 112.03. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the General Decision unless the Administrator of the DOL's Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the General Decision which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

- d. If the Employment and Training Administration withdraws approval of a training program, the Contractor or subcontractor 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.

(e) Apprentices and Trainees

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation are not subject to the requirements of 112.03(d). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

(f) Truck Drivers

1. The payment of Davis-Bacon wages to truck drivers shall be in accordance with the decision reached in Building and Construction Trades Dept. v. Midway, (D.C. Cir. 1991) 932 F. 2d 985.
2. Davis-Bacon wages shall only apply to laborers who work on the site of the construction work, and not laborers employed off-site, such as suppliers, materialmen, and material delivery truck drivers, regardless of their employer.
3. For purposes of the contract, the definition of work subject to Davis-Bacon wages shall include transportation between the actual construction location and a facility which is dedicated to such construction and deemed a part of the site of the work within the meaning of the term "site of the work", as set forth in the regulations at 29 CFR 5.2 et seq. which are herein incorporated by reference.
4. "Site of the work" shall be the physical place or places where the construction called for in the contract will remain when work on it has been completed.

5. *The site of the work shall include off-site facilities such as fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided they are dedicated exclusively, or nearly so, to the performance of the contract work and are so located in proximity to the actual construction location that it would be reasonable to include them.*
6. *The site of the work shall not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of the Contractor or a subcontractor whose locations and continuance in operation are determined wholly without regard to a particular 100% State-funded construction contract or project.*
7. *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 before opening of bids and not on the project site, are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.*

(g) Withholding

The Department will upon its own action withhold, or cause to be withheld, from the Contractor or subcontractor under this contract or another contract with the Contractor as much of the accrued payments or advances as may be considered necessary to pay laborers, including apprentices, trainees, and helpers, employed by the Contractor or a subcontractor the full amount of wages required by the contract. In the event of failure to pay a laborer, including an apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Department's contracting officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of further payment, advance, or guarantee of funds until such violations have ceased.

(h) Overtime Requirements

No Contractor or subcontractor contracting for a part of the contract work which may require or involve the employment of laborers, including apprentices, trainees, and helpers described in 112.03(d) and 112.03(e) shall require or permit a laborer in a given workweek in which he/she is employed on such work, to work in excess of 40 h in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one half time his/her basic rate of pay for all hours worked in excess of 40 h in such workweek.

(i) Violation: Liability for Unpaid Wages

In the event of violation of 112.03(g), the Contractor and each subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages.

(j) Withholding for Unpaid Wages

The Department will upon its own action withhold, or cause to be withheld, from the monies payable on account of work performed by the Contractor or subcontractor

under the contract or another contract with the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages.

112.04 Statements and Payrolls

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, apprentices, and trainees working at the site of the work.*
- (b) The payroll records shall contain the name of each employee; his or her correct classification; hourly rates of wages paid, including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis-Bacon Act; daily and weekly number of hours worked; deductions made; and actual wages paid. The Contractor and each subcontractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.*
- (c) The Contractor and each subcontractor shall furnish, each week in which contract work is performed, to the Engineer a payroll of wages paid each of its employees, including apprentices and trainees, described in 112.03(d) and 112.03(e), and watchers and guards engaged on work during the preceding weekly payroll period. The payroll submitted shall set out accurately and completely all of the information required to be maintained in accordance with 112.04(b). 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 as Federal stock number 029-005-0014-1, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor shall be responsible for the submission of copies of payrolls by all subcontractors.*
- (d) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or subcontractor or its agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:*
 - 1. That the payroll for the payroll period contains the information required to be maintained under 112.04(b) and that such information is correct and complete.*
 - 2. That each laborer, including each 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 29 CFR 3.

3. *That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.*
- (e) *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 112.04 requirement (d).*
- (f) *The Contractor or subcontractor shall make the records required under 112.04 requirement (b) available for inspection, copying, or transcription by authorized representatives of the Department, and shall permit such representatives to interview employees during work hours on the project site. If the Contractor or subcontractor fails to submit the required records or to make them available, the Department, after written notice to the Contractor, may take such actions as may be necessary to cause the suspension of further payment, advance, or guarantee of funds.*
-