U.S. Department of Transportation
Federal Aviation Administration

Advisory Circular

Subject: LABOR REQUIREMENTS FOR THE AIRPORT IMPROVEMENT PROGRAM (AIP)

Date: 10/15/86
Initiated by: APP-510

AC No: 150/5100-6D
Change:

1. PURPOSE. This advisory circular (AC) encompasses the basic labor and associated requirements for the airport grant program. It is intended for the airport sponsors using program assistance and for contractors and sub-contracots working on projects under the program. This revision incorporates the latest changes to the Davis-Bacon regulations and the Contract Work Hours and Safety Standards Act.

2. CANCELLATION. AC 150/5100-6C, Labor Requirements for the Airport Improvement Program (AIP), dated 10/19/83, is cancelled.

Paul L. Galis

Paul L. Galis, Director
Office of Airport Planning
and Programming

CONTENTS

	PAGE NO.
SECTION 1. INTRODUCTION	
1. Introduction	1
2. Overview	1
3. Specific Requirements	2
4. Enforcement and Compliance	3
5. Preconstruction Conferences	4
6.-9. Reserved	5
SECTION 2. MINIMUM WAGES AND FRINGE BENEFITS	
10. Davis Bacon Act (DBA)	5
11. Wages and Fringe Benefits	5
12. When Minimum Wage Rates Should Be Used	6
13. When Minimum Wage Rates Are Not Required	6
14. Wage Determinations	6
15. Post Determination Actions	8
16. Classification	9
17. Posting of Wage Determinations	10
18. Invitation For Bid Requirements	10
19. Contractor Certification As To Labor Provisions	10
20. Wage Determinations - Special Situations	11
21.-29. Reserved	13
SECTION 3. OVERTIME HOURS AND PAY	
30. Contract Work Hours and Safety Standards Act (CWHSSA)	13
31. Requirements	13
32.-39. Reserved	14
SECTION 4. UNAUTHORIZED DEDUCTIONS	
40. The Copeland "Anti-Kickback" Act	14
41. Requirements	14
42.-49. Reserved	15
SECTION 5. MISCELLANEOUS	
50. Fair Labor Standards Act	15
51. Occupational Safety and Health Act of 1970	15
52. Airport and Airway Improvement Act of 1982	15
53.-99. Reserved	15

Appendix 1. Labor Provisions -- for Contracts (8 pages)
Appendix 2. Preconstruction Conference - Outline of Labor Requirements (for Successful Bidders) (4 pages)
Appendix 3. Section 515 of the Airport and Airway Improvement Act of 1982 (1 page)
Appendix 4. Definition of Site of Work, Wages, and Classification (3 pages)
Appendix 5. Preparation of Standard Form 308 (2 pages)

SECTION 1. INTRODUCTION

1. INTRODUCTION. The Federal Aviation Administration (FAA) administers an airport grant program which provides funds to eligible airports for a variety of projects. The program, which is known as the Airport Improvement Program (AIP), is authorized by the Airport and Airway Improvement Act (AAIA) of 1982. When these projects involve construction contracts in excess of $2,000, provisions of other Federal laws and regulations involving wage rates, overtime pay, and kickbacks become applicable.

2. OVERVIEW.

a. The basic requirements to comply with the various Labor laws and regulations are compiled in this AC for ready reference. The compilation serves as a convenient reference manual. In the event of amendment to existing regulations, Executive Orders, policy guidelines, and requirements, or new enactments, or any other situation resulting in a discrepancy between the requirements in this AC and the legal authorities upon which they are based, the legal authorities govern.

b. To facilitate the understanding of the various laws which affect federally-assisted contracts for construction in excess of $2,000, this AC has been divided into several sections:

(1) Section 2. Minimum Wages and Fringe Benefits. This section deals with the Davis-Bacon Act (DBA) and the Department of Labor (DOL) implementing regulations (29 CFR (Code of Federal Regulations) Parts 1, 3, and 5). In general, the DBA prevailing wage rates are limited to "laborers" and "mechanics" on the site.

(2) Section 3. Overtime Rates. Overtime in the construction industry is regulated by the Contract Work Hours and Safety Standards Act (CWHSSA). Laborers and mechanics (including watchmen and guards) on the construction site are to be paid overtime wages at one and one-half times their basic rate for all hours in excess of 40 hours in a workweek.

(3) Section 4. Unauthorized Deductions. The Copeland "Anti-Kickback" Act precludes a contractor or subcontractor from extracting rebates from wages paid to persons employed by any contractor or subcontractor engaged in federally-assisted construction projects.

(4) Section 5. Miscellaneous Requirements. This section deals with the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act of 1970, and the veterans preference requirements under the AAIA.

c. The requirements of most of these laws and regulations are closely related and often intertwined. Sponsors (AIP term for the airport owner), contractors, and subcontractors who meet the requirements of one usually meet the requirements of several. For example, the weekly payroll submittal required by the Copeland "Anti-Kickback" Act also meets the requirements of the DBA.

3. SPECIFIC REQUIREMENTS. Under the Department of Labor regulations, sponsors and contractors must comply with requirements set forth in 29 CFR Parts 1, 3, and 5.

a. Sponsor. The sponsor's requirements under the labor regulations are as follows:

(1) To place a copy of the current wage determination issued by the Department of Labor in each solicitation (29 CFR 1.6(b));

(2) To include in all construction contracts in excess of $2,000 the appropriate clauses required by 29 CFR 5.5 (see appendix 1);

(3) To award construction contracts conditioned on the acceptance by the contractor of the appropriate wage determination;

(4) To report all suspected or reported violations of labor regulations to the FAA;

(5) To withhold, on its own action or at the written request of the DOL, from the contractor accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor the full amount of wages required by the contract (29 CFR 5.5 (a)(2));

(6) To review the weekly payroll records and statements (required by the Copeland Anti-Kickback Act) submitted by the prime contractor for compliance with the applicable wage determination, conduct periodic on-site inspections to ascertain compliance and retain them for a period of three years from the date of completion of the contract (29 CFR 5.6(a)(2));

(7) To award contracts to contractors who have not been debarred for violations of the Davis-Bacon Act;

(8) To 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 will be classified in conformance with the wage determination (29 CFR 5.5(a)(1)(ii)).

b. Contractors and Subcontractors. Contractors and subcontractors are required to:

(1) Pay their laborers and mechanics the wages and fringe benefits stipulated by the appropriate wage determination in accordance with the Davis-Bacon Act and the proper overtime rate in accordance with the CWHSSA (29 CFR 5.5(a));

(2) Post the wage determination and the Davis-Bacon poster (WH-1321) at the site of work in a prominent and accessible place (29 CFR 5.5 (a)(1)(i));

(3) Ensure that all construction subcontracts contain the appropriate clauses required by 29 CFR 5.5 (see appendix 1);

(4) Maintain payrolls and basic records during the course of the work and preserve them for as period of 3 years for all laborers and mechanics working at the site (29 CFR 5.5 (a)(3)). These records should contain:

(i) Contractor's name, contract (project) number, and the payroll period covered;

(ii) Name, address, and social security number of each worker;

(iii) Classification and hourly rate of wages paid;

(iv) Daily and weekly number of hours worked;

(v) Deductions made; and

(vi) Actual wages paid.

(5) Maintain written evidence of the registration of apprenticeship programs and certification of trainee programs 29 CFR 5.5 (a)(3));

(6) Submit to the sponsor weekly a copy of all payrolls consisting of information in (4) above, accompanied by a "Statement of Compliance" signed by the contractor or the subcontractor or agent. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors (29 CFR 5.5 (a)(3)).

4. ENFORCEMENT AND COMPLIANCE.

a. Federal Enforcement. The Department of Labor prescribes regulations and procedures pertaining to labor standards enforcement:

(1) The Davis-Bacon Act and the Contract Work Hours and Safety Standards Act. While the FAA is responsible for the day-to-day administration and enforcement of the DBA and the CWHSSA, the DOL has oversight over both acts and will normally investigate any complaint under these laws;

(2) Copeland "Anti-Kickback" Act. FAA's responsibility extends only to ensuring the inclusion of contractual provisions of the Act and to requiring the sponsor to report all suspected violations to the FAA, which will, in turn, notify DOL.

(3) Fair Labor Standards Act. The DOL is responsible for enforcement of the FLSA. Violations brought to the attention of the FAA will be referred to the DOL.

b. State/Local Enforcement. In considering enforcement of labor requirements on grant assisted construction contracts, it should be emphasized that some states have their 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 in addition to the required provisions of Federal laws and regulations applicable to such contracts.

c. Liquidated Damages. Liquidated damages may be assessed by the FAA against a contractor for violations of the CWHSSA found by the DOL. FAA is responsible for collecting any amount of liquidated damages assessed to a contractor. 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. If the amount is less than $500, the FAA has the discretion to relieve the contractor of this liability without the concurrence of the Secretary of Labor.

d. Debarment. Any firm or person debarred for violation of the Davis-Bacon Act is ineligible to be a prime contractor or subcontractor on any contract funded by the airport grant program. More detail is provided in 29 CFR 5.7, 5.8, 5.9, and 5.12.

e. Criminal Sanctions. In cases where there is substantial evidence that violations of labor statutes are willful and in violation of a criminal statute, such violations will be forwarded to the Dept. of Justice for prosecution if the facts warrant.

5. 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. 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. The sponsor, with respect to labor requirements, should:

(1) Review. Review wage rates and labor provisions. If multiple wage schedules exist, advise which schedule is applicable to which work;

(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. Outline. Appendix 2 contains an outline that should be furnished each successful bidder and its subcontractors.

6.-9. RESERVED.

SECTION 2. MINIMUM WAGES AND FRINGE BENEFITS.

10. DAVIS-BACON ACT (DBA). The Davis-Bacon Act requires payment of prevailing wages and fringe benefits to laborers and mechanics employed on the construction of public buildings or public works 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 coverage of the DBA to all construction contracts in excess of $2,000 for work on projects for airport development approved under the program. (See appendix 3.)

11. WAGES AND FRINGE BENEFITS. All laborers and mechanics employed or working on the "site of work" are required to be paid the full amount of wages and bona fide fringe benefits contained in the wage determination of the Secretary of Labor. Employees of a prime contractor or a subcontractor on a Davis-Bacon covered project who haul materials to or from or on the project site would be subject to the DBA labor standard provisions. Employees of an independent trucking firm engaged to haul excavated materials away from a DBA covered project would be covered by the DBA provisions. (See appendix 4 for definition of "site of work" and "wages.")

a. 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 1 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.

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

12. WHEN MINIMUM WAGE RATES SHOULD BE USED.

a. Competitive/Negotiated Contracts. AIP construction contracts in excess of $2,000 awarded competitively or negotiated will include the applicable minimum wage rates.

b. Owner Removal Contracts. Minimum wage rates and labor standards provisions may apply to owner removal contracts. If the installation, removal, or relocation of facilities is mandated by a grant funded project, and exceeds $2,000, the installation, removal, or relocation is subject to the minimum wage provisions. For example, if a grant funded project requires the relocation of a pipeline owned by other than the sponsor, and the owner hires a contractor or uses his own employees to relocate the line, the minimum wage rates apply.

c. 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. 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.

d. 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. Since the current wage rate would still be applicable, no new wage determination is required to cover the work involved in the change order.

13. WHEN MINIMUM WAGE RATES ARE NOT REQUIRED. The requirement for minimum wage rates applies only to construction work by contract; therefore, no minimum wage rates are needed for construction by the sponsor's own work force (commonly referred to as force account). If, during the use of force account, the sponsor needs to rent a piece of equipment, wage rates are not needed for operators furnished with rented equipment (when no construction contract is involved).

14. WAGE DETERMINATIONS. There are two types of wage determinations: general and project. These determinations include the original Department of Labor wage determination and any subsequent determinations modifying, superseding, correcting or otherwise changing the provisions of the original determination. The FAA and/or sponsor normally 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.

a. General Wage Determination.

(1) 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 will publish through the Government Printing Office (GPO) a general wage determination in a special purpose document, General Wage Determinations Issued Under the Davis-Bacon and Related Acts. This document contains no expiration date. 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) The General Wage Determination publication is available on a subscription basis from the GPO. For those not wishing to subscribe, it is available at all 80 Regional Government Depository Libraries and many of the 1400 Governmental Depository Libraries across the nation. In addition, each FAA field office should be able to obtain the appropriate determinations.

(3) 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. When two or more types of construction are involved, the sponsor, together with the FAA must designate what work is covered by each type. 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.

(4) This type of a wage determination 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. If there is an applicable general wage determination for a project, it should be used and a project wage determination should not be requested.

b. Project Wage Determination.

(1) 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 complete description of work should be furnished with the SF 308 request (see appendix 5). The request 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. 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.

(2) When such a wage 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, as in paragraphs 15 and 20 below.

(3) A project wage determination is issued by the DOL to be effective for 180 calendar days from the date of issuance. If the determination expires before all work under the project is placed under contract, an extension may be requested or a new determination obtained for use in the contract for the remaining project work.

15. POST DETERMINATION ACTIONS. Both project and general wage determinations may be modified periodically to keep them current, correct erroneous wage determinations, or for other purposes. Modifications and supersedeas determinations do not extend the life of the original decision.

a. Modifications. 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 and carries that determination's number. The changes may be additions, deletions of classifications, increases or decreases in wage rates and/or fringe benefits. Modifications published after contract award are not effective.

(1) 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. All modifications received by FAA, in case of a project wage determination, or published in the GPO special purpose published document and noticed in the Federal Register, in the case of a general wage determination, are effective unless the FAA waives this requirement for those published or received less than 10 days before bid opening.

(2) For general wage determinations only, 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 sponsor through the FAA requests and receives an extension of the 90-day period from the Department of Labor.

b. Supersedeas Wage Determination. Supersedeas wage determinations bring up to date the provisions of original decisions and generally involve changes or corrections in a large number of crafts or job classifications as opposed to a "modification" which usually involves only limited change. Supersedeas decisions are effective under the same circumstances as modifications. The difference between modification and a supersedeas is that the modification allows the old decision to remain active and changes only a few of the rates whereas the latter supersedes the old decision and, therefore, the old decision cannot thereafter be used. A supersedeas decision carries a new determination number.

16. CLASSIFICATION. Only laborers and mechanics are included in wage determinations. 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. Clerical, supervisory or nonmanual workers are excluded. A watchman, for example, is not covered under Davis-Bacon if (s)he does no manual work (though (s)he is covered under the CWHSSA). See appendix 4 for basic, intermediate, and apprentice and trainee classifications.

a. 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 b. below. Laborers and mechanics should be classified on the contractor's payrolls and be paid not less than the stipulated minimum wage rates and fringe benefits. 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.

b. 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 in conformance with the wage determination. Any additional classification action is not valid unless the DOL has approved it; if a dispute exists, the matter is to be referred to DOL for resolution. Any additional classification actions will be approved only when the following criteria have been met:

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

(2) The classification is used in the area by the construction industry; and

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

If the sponsor, the contractor, and the affected employees agree upon a classification and a rate, a report of the action accompanied by two or more of the following types of information supporting the rate as reasonable is sent to the FAA for transmittal to the DOL for their review. The Department of Labor will approve,

modify, or disapprove the conformed rate within 30 days of receipt or will notify the FAA and the sponsor that additional time is necessary.

(i) Statements. Statements furnished 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. Statements of local contractors reflecting number of workers employed at the rate agreed upon for the particular classification should be included;

(ii) Agreements. Signed collective bargaining agreements;

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

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

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

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

17. POSTING OF WAGE DETERMINATIONS. In accordance with DOL regulations, the contractor(s) must 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 is to be posted during the entire life of the contract. Copies of WH Publication 1321 may be obtained from the GPO.

18. INVITATION FOR BID REQUIREMENTS. The applicable wage determination of the Department of Labor must be included in the invitation for bids or proposed contract. When a project wage rate determination is obtained, 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.

19. 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" and it is not debarred is to 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 contained in 29 CFR 5.5(a)(3)(ii) which requires 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.

20. WAGE DETERMINATIONS - SPECIAL SITUATIONS.

a. Project Wage Determination.

(1) 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.

(2) 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. 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.

b. Letter of Inadvertence (General and Project). 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.

c. 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. 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).

d. 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).

21.-29. RESERVED.

SECTION 3. OVERTIME HOURS AND PAY

30. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CWHSSA), AS AMENDED. The CWHSSA established 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, as amended, 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 40 hours in such workweek except as provided by the Act. It applies to all airport grant 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.

31. REQUIREMENTS.

a. General. The CWHSSA requires payment of overtime compensation 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 1, 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 are to be computed on the basis of a standard workweek of 40 hours. Work in excess of a standard 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 40 hours in the workweek.

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 in appendix 1, paragraph 2e, of this AC. While DBA limits minimum wage protection to laborers and mechanics employed directly on the "site of the work," 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. The Department of Labor has enforcement responsibility for Section 107 of the Act, but the sponsor must assume responsibility for safety surveillance.

d. Nonapplication of the Act. This Act does not apply to construction of $2,000 or less, transportation by land, air or water, or the purchase of supplies or materials or articles ordinarily available in the open market.

32.-39. RESERVED.

SECTION 4. UNAUTHORIZED DEDUCTIONS

40. THE COPELAND "ANTI-KICKBACK" ACT. 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.

41. REQUIREMENTS.

a. General. The requirements of the Copeland Act apply to any contract which is subject to the Federal wage standards and which is for construction, or repair of public works or buildings, or works financed in whole or in part by loans or grants of the United States. Sponsors should ensure that appropriate clauses are included in all contracts subject to the requirements of 29 CFR Parts 3 and 5 (appendix 1 of this AC). All covered employees are to be paid at least weekly and should have complete freedom of wage disposition.

b. Weekly Statement. Under the DOL regulations, 29 CFR 5.5, each prime contractor is required to furnish 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 should review the payrolls for any discrepancies. The statement 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 may be furnished 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 Form WH 347 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The sponsor or his agent should then certify to the local FAA Airports office that the report was received and acceptable.

c. Payroll Deductions. Payroll deductions stated in 29 CFR 3.5 may be made without application to or approval of the Department of Labor. Payroll deductions stated in 29 CFR 3.6 are permissable with approval of the Department of Labor. Applications for approval of the Department of Labor should comply with 29 CFR 3.7.

42.-49. RESERVED.

SECTION 5. MISCELLANEOUS

50. FAIR LABOR STANDARDS ACT. While the Davis-Bacon Act is concerned with the wages of laborers and mechanics at the construction site, the Fair Labor Standards Act (FLSA) requires the payment of the Federal minimum wage to all employees engaged in interstate commerce or the production of goods for interstate commerce and includes most employees in the construction industry. The minimum wage required under FLSA will often differ from that required by the DBA. The FLSA also requires the payment of overtime for these employees based on a 40 hour workweek. If an airport sponsor is aware of apparent violations by a contractor of the FLSA provisions, such violations should be brought to the attention of DOL through the FAA.

51. 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). This is tied in with Section 107 of the CWHSSA (see paragraph 31.c. of this AC).

52. AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982. All grant-assisted contracts which involve labor (including those under $2,000) are required to contain provisions to insure that 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.

a. A Vietnam-era veteran is an individual who served on active duty as defined in Section 101(21) of Title 38 of the United States Code in the Armed Forces for a period of more than 180 consecutive days any part of which occurred during the period beginning August 5, 1964, and ending May 7, 1975, and who was separated from the Armed Forces under honorable conditions.

b. A disabled veteran is an individual described in Section 2108(2) of Title 5 of the United States Code.

c. See appendix 1, paragraph 3, for wording to be included in all construction contracts and subcontracts under the airport grant program.

53.-99. RESERVED.

APPENDIX 1. LABOR PROVISIONS -- FOR CONTRACTS

1. Each sponsor entering into a construction contract over $2,000 for an airport development project is required to insert in the contract the following provisions from 29 CFR 5.5. Each contractor is to include these provisions in each construction subcontract.

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 FAA or the sponsor 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 Federal Aviation Administration 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 paragraph 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 applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph 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 paragrah 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 incorporated 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 sponsor, the Federal Aviation Administration 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 Federal Aviation Administration 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 second 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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, 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 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 Federal Aviation Administration or the sponsor 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 2. 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, including employees of the prime contractor and subcontractors who haul materials to or from or on a Davis-Bacon covered project site.

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. 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.

4. 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.

5. 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.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED.

a. Overtime. Contractors and subcontractors must pay one and one-half times the basic rate of pay for all hours worked over 40 hours per week (all covered employees). Fringe benefits may be excluded from the additional half-time computation; however, fringe benefits must be paid for the straight time portion of overtime hours worked.

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

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

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

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

f. Appeals. An appeal can be made to the Secretary of Labor or the Court of Claims within 60 days from the computation, withholding, or final order, regarding liquidated damages.

g. 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 6 months or by both.

7. 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 3 years for all laborers and mechanics working at the site of the work.

8. 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 generally 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 1 of this AC must be physically incorporated in applicable subcontracts.

9. 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.

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

11. 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.

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

13. 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.

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

APPENDIX 3. SECTION 515 OF THE AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

Construction projects in excess of $2,000 funded by the airport grant program are subject to the Davis-Bacon Act labor requirements through Section 515 of the AAIA.

Section 515 states that "all contracts in excess of $2,000 for work on projects for airport development approved under this title which involve labor shall contain provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for work."

APPENDIX 4 DEFINITION OF SITE OF WORK, WAGES, AND CLASSIFICATION.

1. SITE OF WORK.

a. 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 b. 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.

b. 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. The above definition also excludes 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.

c. 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 generally are not subject to the DBA. 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 a. and b., above.

2. 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.)

3. DBA CLASSIFICATIONS.

a. Basic Classification. The classification of a workman must describe his/her duties or the work (s) 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.

b. Intermediate Classification.

(1) 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. Since this depends on local area practice, the use of intermediate classifications may vary by location. For example, Labor will not usually issue a wage rate for workmen classified 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 classified on the contractor's payroll and paid accordingly.

(2) 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.

c. Apprentice and Trainee Classifications.

(1) Apprentice.

(i) 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

(ii) 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.

(2) 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.

(3) 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.

APPENDIX 5. 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.

Request For Wage Determination And
Response To Request
(Davis Bacon Act as Amended and Related Statutes)

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

FOR DEPARTMENT OF LABOR USE

Response To Request

☐ Use area determination issued for this area

_____

_____

☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Mail Your Request To:
U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determinations
Washington, D.C. 20210

Requesting Officer *(Typed name and signature)*

Department, Agency, or Bureau | Phone Number

Date of Request | Estimated Advertising Date | Estimated Bid Opening Date

Prior Decision Number *(If any)* | Estimated $ Value of Contract: ☐ Under ½ Mil ☐ 1 to 5 Mil ☐ ½ to 1 Mil ☐ Over 5 Mil | Type of Work: ☐ Bldg. ☐ Highway ☐ Resid. ☐ Heavy

Address to which wage determination should be mailed. *(Print or type)*

Location of Project *(City, County, State, Zip Code)*

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
___ Pileldrivermen
___ Plasterers
___ Plumbers
___ Roofers
___ Sheet metal workers
___ Soft floor layers
___ Steamfitters
___ Welders—rate for craft
___ Truck drivers
___ Power equipment operators *(Specify types)*
___ _____
___ _____
___ _____
___ _____
___ _____
___ _____

Other Crafts
___ _____
___ _____
___ _____
___ _____

308-104
NSN 7540-00-105-0078

Standard Form 308 (Rev. May 1985)
U.S. Department of Labor – 29 CFR Part 1