



# SUPPLEMENTARY CONDITIONS

## for federal wage rate requirements

Intended for use with OFD Conditions for General Work.

### MODIFICATIONS TO

OFD s007213 for General Work  
(a modified AIA Document A201-1997)

### GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

The following supplements modify, change, delete from or add to "General Conditions of the Contract for Construction", and any other Conditions preceding these by section number for this Contract. Where a portion of Conditions is altered by these Conditions, the unaltered portion shall remain in effect.

#### ADD THE FOLLOWING:

#### 3.4.7.2 Federal Wage Scale

**3.4.7.2.1** A Federal Wage Scale applies to the Project, and is included in Contract Documents as an attachment to this Section. Contractor shall pay not less than rates set forth. If both Federal and State wage rates apply to project, Contractor shall pay the higher of the two wage scales for each craft or trade. Failure of Owner or Designer to provide current wage scale decision prior to bidding does not relieve Contractor of obligations set forth above. If applicability or values of Prevailing Wage Rates applicable to the project change during the course of the Contract, or differ from those provided in Contract Documents, equitable adjustment in Contract Sum shall be made.

#### 3.4.7.2.2 SUBCONTRACTS

Contractor shall insert these provisions in subcontracts and require subcontractors to include these provisions in any lower tier subcontracts. Contractor shall be responsible for compliance with the provisions set forth herein by direct subcontractors and lower tier subcontractors.

#### 3.4.7.2.3 FEDERAL COMPLIANCE OFFICER

The Owner shall identify a Federal Compliance Officer at the institution where the Work is being performed. The Contractor and Designer shall meet with the Federal Compliance Officer to review the Davis-Bacon requirements and establish appropriate processes for transmitting the certified payrolls.

#### 3.4.7.2.4 DAVIS-BACON ACT

**3.4.7.2.4.1** Refer to provisions contained in FAR 52.222-6, Feb 1995, or latest revision.

**3.4.7.2.4.2** 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 bound herein or issued by addendum, and which is 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 fringes benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph 1.4.8; of this paragraph; 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 period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph 1.7. 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 employers payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under subparagraph 1.4.3 of this paragraph) and the Davis-Bacon

poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**3.4.7.2.4.3** The Federal Compliance 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 Federal Compliance Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all 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 utilized in the area by the construction industry.
- .3** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**3.4.7.2.4.4** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Federal Compliance 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 Federal Compliance Officer to the Administrator of the Wage and Hour Division Employment Standards Administration U.S. Department of Labor Washington, DC 20210. The administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Federal Compliance Officer or will notify the Federal Compliance Officer within the 30-day period that additional time is necessary.

**3.4.7.2.4.5** In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Federal Compliance Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Federal Compliance Officer shall refer the questions, including the views of all interested parties and the recommendation of the Federal Compliance Officer, to the

Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Federal Compliance Officer or will notify the Federal Compliance Officer within the 30-day period that additional time is necessary.

**3.4.7.2.4.6** The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs 1.4.4 and 1.4.5 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.

**3.4.7.2.4.7** 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 benefits as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**3.4.7.2.4.8** 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.

#### **3.4.7.2.5 WITHHOLDING OF FUNDS**

**3.4.7.2.5.1** Refer to provisions contained in FAR 52.222-7, Feb 1988, or latest revision.

**3.4.7.2.5.2** The Federal Compliance Officer 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 Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including

apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Compliance Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### **3.4.7.2.6 PAYROLLS AND BASIC RECORDS**

**3.4.7.2.6.1** The Contractor and its subcontractors shall maintain payrolls and basic payroll records required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. Refer to provisions contained in FAR 52.222-8, Feb 1988, or latest revision.

**3.4.7.2.6.2** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 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 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 subparagraph 1.4.8 above, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs,

the registration of apprentices and trainees, and the ratio and wage rates prescribed in the applicable programs.

**3.4.7.2.6.3** The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Federal Compliance Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph 1.6.2- above. This information shall be compiled weekly into a single PDF report and transmitted electronically. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

**3.4.7.2.6.4** 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:

- .1** That the payroll for the payroll period contains the information required to be maintained under subparagraph 1.6.2 above, of this paragraph and that such information is correct and complete;
- .2** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29CFR Part 3; and
- .3** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**3.4.7.2.6.5** 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 subparagraph 1.6.4 of this paragraph.

**3.4.7.2.6.6** The falsification of any of the certifications in this paragraph 1.6 may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States code.

**3.4.7.2.6.7** The Contractor or subcontractor shall make the records required under subparagraph 1.6.2 of this paragraph available for inspection, copying, or transcription by the Federal Compliance Officer or authorized representatives of the Federal Compliance Officer or the Department of Labor. The Contractor or subcontractor shall permit the Federal Compliance Officer or representatives of the Federal Compliance Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Federal Compliance Officer may, after written notice to the Contractor, take such action as may be necessary to cause suspension of any further payment. 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.

#### **3.4.7.2.7 APPRENTICES AND TRAINEES**

**3.4.7.2.7.1** Refer to provisions contained in FAR 52.222-9, Feb 1988, or latest revision.

#### **3.4.7.2.7.2 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 payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable 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 journeymen hourly rate) specified in the Contractors or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentices level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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.



### **3.4.7.2.7.3 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 trainees 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 in 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 in 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 in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in 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.

**END OF SECTION**