

(2) The Secretary of Labor may modify any wage determination before the award of the contract or contracts for which it was sought. If the proposed contract is awarded on the basis of public advertisement and open competitive bidding, any modification that the FAA receives less than 10 days before the opening of bids is not effective, unless the Administrator finds that there is reasonable time to notify bidders. A modification may not continue in effect beyond the effective period of the wage determination to which it relates. The Administrator sends any modification to the sponsor as soon as possible. If the modification is effective, it must be incorporated in the invitation for bids, by issuing an addendum to the specifications or otherwise.

(e) *Requirements for awarding construction contracts.* A sponsor may not award a construction contract without the written concurrence of the Administrator (through the Area Manager) that the contract prices are reasonable and that the contract conforms to the sponsor's grant agreement with the United States. A sponsor that awards contracts on the basis of public advertising and open competitive bidding, shall, after the bids are opened, send a tabulation of the bids and its recommendations for award to the Area Manager. The allowable project costs of the work, on which the Federal participation is computed, may not be more than the bid of the lowest responsible bidder. The sponsor may not accept a bid by a contractor whose name appears on the current list of ineligible contractors published by the Comptroller General of the United States under § 5.6(b) of Title 29 of the regulations of the Secretary of Labor (29 CFR part 5), or a bid by any firm, corporation, partnership, or association in which that contractor has a substantial interest.

(f) *Secretary of Labor's interpretations apply.* Where applicable by their terms, the regulations of the Secretary of Labor (29 CFR 5.20-5.32) interpreting the fringe benefit provisions of the Davis-Bacon Act apply to this section.

[Amdt. 151-6, 29 FR 18001, Dec. 18, 1964]

**§ 151.49 Performance of construction work: Contract requirements.**

(a) *Contract provisions.* In addition to any other provisions necessary to ensure completion of the work in accordance with the grant agreement, each sponsor entering into a construction contract for an airport development project shall insert in the contract the provisions required by the Secretary of Labor, as set forth in appendix H of this part. The Director, Airports Service, may amend any provision in appendix H from time to time to accord with rule-making action of the Secretary of Labor. The provisions in the following paragraphs also must be inserted in the contract:

(1) *Federal Aid to Airport Program Project.* The work in this contract is included in Federal-aid Airport Project No. \_\_, which is being undertaken and accomplished by the [insert sponsor's name] in accordance with the terms and conditions of a grant agreement between the [insert sponsor's name] and the United States, under the Federal Airport Act (49 U.S.C. 1101) and part 151 of the Federal Aviation Regulations (14 CFR part 151), pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

(2) *Consent to assignment.* The contractor shall obtain the prior written consent of the [insert sponsor's name] to any proposed assignment of any interest in or part of this contract.

(3) *Convict labor.* No convict labor may be employed under this contract.

(4) *Veterans' preference.* In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to qualified individuals who have served in the military service of the United States (as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940) and have been honorably discharged from that service, except

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that preference may be given only where that labor is available locally and is qualified to perform the work to which the employment relates.

(5) *Withholding: Sponsor from contractor.* Whether or not payments or advances to the [insert sponsor's name] are withheld or suspended by the FAA, the [insert sponsor's name] may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by this contract.

(6) *Nonpayment of wages.* If the contractor or subcontractor fails to pay any laborer or mechanic employed or working on the site of the work any of the wages required by this contract the [insert sponsor's name] may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment or advance of funds until the violations cease.

(7) *FAA inspection and review.* The contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.

(8) *Subcontracts.* The contractor shall insert in each of his subcontracts the provisions contained in paragraphs [insert designations of 6 paragraphs of contract corresponding to paragraphs (1), (3), (4), (5), (6) and (7) of this paragraph], and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(9) *Contract termination.* A breach of paragraphs [insert designation of 3 paragraphs corresponding to paragraphs (6), (7) and (8) of this paragraph] may be grounds for termination of the contract.

(b) *Exemption of certain contracts.* Appendix H to this part and paragraph (a)(5) of this section do not apply to prime contracts of \$2,000 or less.

(c) *Adjustment in liquidated damages.* A contractor or subcontractor who has become liable for liquidated damages

under paragraph G of appendix H and who claims that the amount administratively determined as liquidated damages under section 104(a) of the Contract Work Hours Standards Act is incorrect or that he violated inadvertently the Contract Work Hours Standards Act notwithstanding the exercise of due care, may—

(1) If the amount determined is more than \$100, apply to the Administrator for a recommendation to the Secretary of Labor that an appropriate adjustment be made or that he be relieved of liability for such liquidated damages; or

(2) If the amount determined is \$100 or less, apply to the Administrator for an appropriate adjustment in liquidated damages or for release from liability for the liquidated damages.

(d) *Corrected wage determinations.* The Secretary of Labor corrects any wage determination included in any contract under this section whenever the wage determination contains clerical errors. A correction may be made at the Administrator's request or on the initiative of the Secretary of Labor.

(e) *Secretary of Labor's interpretations apply.* Where applicable by their terms, the regulations of the Secretary of Labor (29 CFR 5.20-5.32) interpreting the "fringe benefit provisions" of the Davis-Bacon Act apply to the contract provisions in appendix H, and to this section.

[Amdt. 151-6, 29 FR 18001, Dec. 18, 1964, as amended by Amdt. 151-7, 30 FR 7484, June 6, 1965]

**§ 151.51 Performance of construction work: Sponsor force account.**

(a) Before undertaking any force account construction work, the sponsor (or any public agency acting as agent for the sponsor) must obtain the written consent of the Administrator through the Area Manager. In requesting that consent, the sponsor must submit—

(1) Adequate plans and specifications showing the nature and extent of the construction work to be performed under that force account;

(2) A schedule of the proposed construction and of the construction equipment that will be available for the project;