

**PART 151—FEDERAL AID TO  
AIRPORTS [NEW]**

**Davis-Bacon Act Fringe Benefit  
Requirements**

The purpose of this amendment to Part 151 [New] of the Federal Aviation Regulations is to incorporate the "Fringe Benefit Requirements" of the Davis-Bacon Act to the extent required by the regulations of the Secretary of Labor (29 CFR Part 5) as amended effective September 30, 1964 (29 F.R. 13462), issued under the Contract Work Hours Standards Act (49 U.S.C. 327-330), and under the Davis-Bacon Act (40 U.S.C. 276a-276a-5). Also, editorial changes in the form of the affected provisions are made that do not involve any substantive change.

Section 15(b) of the Federal Airport Act (49 U.S.C. 1114(b)) requires that "all contracts in excess of \$2,000 \* \* \* which involve labor" must contain provisions establishing the minimum wage rates contractors and subcontractors must pay to laborers, and that these minimum wage rates are to be predetermined by the Secretary of Labor. Public Law 88-349 added a provision to section 15(b) stating that the wage determinations of the Secretary of Labor are to be "in accordance with the Davis-Bacon Act, as amended". On September 30, 1964, the Secretary of Labor issued amendments to his regulations, to implement the amendments to the Davis-Bacon Act requiring that locally prevailing fringe benefits be included in future wage determinations, and revising the contract provisions (required by the Contract Work Hours Standards Act) to reflect the new fringe benefit requirements.

Paragraph (c) of § 151.47, "Procedure for the Secretary of Labor's wage determinations", is amended to require sponsors to furnish available pertinent information as to locally prevailing fringe benefits, as well as wage payment information, with Form DB-11. The reference to Form DB-11(a) is deleted as inapplicable. Paragraph (d) of § 151.47, "Use and effectiveness of the Secretary of Labor's wage determination", is amended to allow the Administrator, upon a finding that there is a reasonable

time to notify bidders, to give effect to the modified wage determinations of the Secretary of Labor received less than 10 days before bid opening. A new paragraph (f) is added to § 151.47 to make the interpretations of the Secretary of Labor of the fringe benefit provisions of the Davis-Bacon Act (29 CFR 5.20-5.32) applicable to § 151.47.

At present, all provisions that sponsors must insert in full in construction contracts are contained in § 151.49(a). To clearly distinguish between the contract provisions the FAA requires and those the regulations of the Secretary of Labor require, the form of § 151.49(a) is substantially revised, and a new Appendix H is added. The FAA-required contract provisions remain in § 151.49(a), and the contract provisions required by the Secretary of Labor are transferred to new Appendix H.

Revised § 151.49(a) contains subparagraphs (1) through (7), representing all of old subparagraphs (1) through (4), (7) and (14) respectively, and new subparagraphs (8) and (9), representing pertinent parts of old subparagraphs (15) and (16). Since subparagraph (17) of § 151.49(a) was superseded by Amdt. 151-5 to Part 151 [New], effective December 21, 1964, it is deleted as inapplicable to construction contracts made under grant agreements entered into after that date. Also, the statement of applicability of old subparagraph (17) is deleted from amended § 151.49(b). Of course, the deleted provision remains effective as to construction contracts made under grant agreements entered into before December 21, 1964, as each grant agreement provides. The Director of Airports Service is delegated authority in revised § 151.49(a) to amend Appendix H to the extent required from time to time by the rule-making action of the Secretary of Labor. Also, two new paragraphs are added to § 151.49. New paragraph (d), "Corrected wage determinations", reflects the rule of the Secretary of Labor that any wage determinations may be corrected by the Secretary of Labor to rectify clerical errors at the Administrator's request or on his own motion. New paragraph (e) makes the Secretary of Labor's interpretations of the fringe benefit provisions of the Davis-Bacon Act applicable to all provisions of § 151.49.

New Appendix H contains the contract provisions required by the Secretary of Labor. For convenience, the provisions are presented in the form of one article to be inserted in the contracts. Paragraphs are numbered A through H, representing old subparagraphs (5), (6) and (8) through (13), and paragraphs I and J, representing pertinent parts of old subparagraphs (15) and (16) of §151.49(a). Several of these provisions are directly affected by the amendments to § 5.5 of the Department of Labor regulations (29 CFR 5.5). Paragraph A, "Minimum wages", is amended to add new subparagraphs (3) and (4). Subparagraph (3) provides for the establishment of cash equivalents for required fringe benefits. Subparagraph (4) requires the approval of the Secretary of Labor before the contractor may consider the cost of specified fringe benefits as part of the wages of laborers and mechanics. Paragraph C, "Payrolls and payroll records", is substantially revised. Amended subparagraph (1) requires the contractor to keep additional records concerning required fringe benefits. Amended subparagraph (2) requires the contractor to submit with its "Weekly Statement of Compliance" additional information when approval under § 151.49(a)(5)(iv) is required, and makes the contractor responsible for the submission of subcontractors' payroll records. Paragraph D, "Apprentices", is amended to require the contractor to submit to the sponsor proof of registration of its apprentice program and its apprentices before any apprentices are used.

Since the amendments to §§ 151.47 and 151.49 are so extensive, these sections are published in full as amended. Also, several minor editorial changes are included, and catchlines are added where appropriate. The practice of citing underlying sections of the regulations of the Secretary of Labor is retained in Appendix H only, and these citations are deleted throughout revised §§ 151.47 and 151.49. Section 151.54(b) is also amended to delete a similar citation.

The procedural and effective date requirements of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) do not apply to this amendment because it is within the exception in that section relating to public loans, grants, benefits and contracts.

In consideration of the foregoing, effective January 18, 1965, Part 151 [New] of Chapter I of Title 14 of the Code of Federal Regulations, is amended as hereinafter set forth.

This amendment is made under the authority of the Federal Airport Act, as amended (49 U.S.C. 1101-1120) and Part 5 of Title 29 of the Code of Federal Regulations, as amended.

Issued in Washington, D.C., on December 11, 1964.

N. E. HALABY,  
Administrator.

1. Section 151.47 is amended to read as follows:

**§ 151.47 Performance of construction work: letting of contracts.**

(a) *Advertising required; exceptions.* Unless the Administrator approves an-

other method for use on a particular airport development project, each contract for construction work on a project in the amount of more than \$2,000 must be awarded on the basis of public advertising and open competitive bidding under the local law applicable to the letting of public contracts. Any oral or written agreement or understanding between a sponsor and another public agency that is not a sponsor of the project, under which that public agency undertakes construction work for or as agent of the sponsor, is not considered to be a construction contract for the purposes of this section, or §§ 151.45, 151.49, and 151.51.

(b) *Advertisement; conditions and contents.* There may be no advertisement for bids on, or negotiation of, a construction contract until the Administrator has approved the plans and specifications. The advertisement shall inform the bidders of the contract and reporting provisions required by § 151.54. Unless the estimated contract price or construction cost is \$2,000 or less, there may be no advertisement for bids or negotiation until the Administrator has given the sponsor a copy of a decision of the Secretary of Labor establishing the minimum wage rates for skilled and unskilled labor under the proposed contract. In each case, a copy of the wage determination decision must be set forth in the initial invitation for bids or proposed contract or incorporated therein by reference to a copy set forth in the advertised or negotiated specifications.

(c) *Procedure for the Secretary of Labor's wage determinations.* At least 60 days before the intended date of advertising or negotiating under paragraph (b) of this section, the sponsor shall send to the District Airport Engineer, completed Department of Labor Form DB-11, with only the classifications needed in the performance of the work checked. General entries (such as "entire schedule" or "all applicable classifications") may not be used. Additional necessary classifications not on the form may be typed in the blank spaces or on an attached separate list. A classification that can be fitted into classifications on the form, or a classification that is not generally recognized in the area or in the industry, may not be used. Except in areas where the wage patterns are clearly established, the Form must be accompanied by any available pertinent wage payment or locally prevailing fringe benefit information.

(d) *Use and effectiveness of the Secretary of Labor's wage determinations.* (1) Wage determinations are effective only for 120 days from the date of the determinations. If it appears that a determination may expire between bid opening and award, the sponsor shall so advise the FAA as soon as possible. If he wishes a new request for wage determination to be made and if any pertinent circumstances have changed, he shall submit a new Form DB-11 and accompanying information. If he claims that the determination expires before award and after bid opening due to unavoidable circumstances, he shall submit proof of the facts which he claims support a finding to that effect.

(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 and 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 District Airport Engineer) 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 District Airport Engineer. 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.

2. Section 151.49 is amended to read as follows:

**§ 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 subparagraphs 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 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 subparagraphs (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 subparagraphs (5), (6) and (7) 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.

#### § 151.54 [Amended]

3. Section 151.54(b) is amended by striking out the citation "(29 CFR 5.6(a) (1))" at the end thereof.

4. Appendix H is added to Part 151 [New] to read as follows:

#### APPENDIX H

There is set forth below the contract provision required by the regulations of the Secretary of Labor in Part 5 of Title 29 of the Code of Federal Regulations. Section 151.49(a) requires sponsors to insert this provision in full in each construction contract.

#### PROVISION REQUIRED BY THE REGULATIONS OF THE SECRETARY OF LABOR

*A. Minimum wages.* (1) All mechanics and laborers 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 amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the Secretary of Labor which is (are) 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; and the wage determination decision(s) shall be posted by the contractor at the site of the work in a prominent place where it (they) can be easily seen by the workers. For the purpose of this paragraph, contributions made or costs reasonably anticipated 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 (4) below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be con-

structively made or incurred during such weekly period (29 CFR 5.5(a)(1)(i)).

(2) Any class of laborers or mechanics which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the [insert sponsor's name] to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination (29 CFR 5.5(a)(1)(ii)).

(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 wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for determination (29 CFR 5.5(a)(1)(iii)).

(4) The contractor may consider as part of the wages of any laborer or mechanic 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, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision(s) of the Secretary of Labor which is included in this contract, only when 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. Whenever practicable, the contractor should request the Secretary of Labor to make such findings before the making of the contract. In the case of unfunded plans and programs, 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 (29 CFR 5.5(a)(1)(iv)).

*B. Withholding: FAA from sponsor.* Pursuant to the terms of the grant agreement between the United States and [insert sponsor's name], relating to Federal-aid Airport Project No. \_\_\_\_\_, and Part 151 of the Federal Aviation Regulations (14 CFR Part 151), the FAA may withhold or cause to be withheld from the [insert sponsor's name] 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. In the event of failure to pay any laborer or mechanic employed or working on the site of the work all or part of the wages required by this contract, the FAA may, after written notice to the [insert sponsor's name], take such action as may be necessary to cause the suspension of any further payment or advance of funds until such violations have ceased (29 CFR 5.5(a)(2)).

*C. Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained 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 will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) 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 29 CFR 5.5(a)(1)(iv) (see subparagraph (4) of paragraph (A) 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 (29 CFR 5.5(a)(3)(1)).

(2) The contractor will submit weekly a copy of all payrolls to the [insert sponsor's name] for transmission to the FAA, as required by § 151.53(a). The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor, under 29 CFR 5.5(a)(1)(iv) (see subparagraph (4) of paragraph (A) above), shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the FAA and the Department of Labor, and will permit such representatives to interview employees during working hours on the job (29 CFR 5.5(a)(3)(ii)).

**D. Apprentices.** Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the [insert sponsor's name] written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work (29 CFR 5.5(a)(4)).

**E. Compliance with Copeland Regulations.** The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference (29 CFR 5.5(a)(5)).

**F. 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 laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic received compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or

in excess of forty hours in such workweek, as the case may be (29 CFR 5.5(c)(1)).

**G. Violations; Liability for unpaid wages; liquidated damages.** In the event of any violation of paragraph F of this provision, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of said paragraph F of this provision, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by said paragraph F of this provision (29 CFR 5.5(c)(2)).

**H. Withholding for unpaid wages and liquidated damages.** The FAA may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph G of this provision (29 CFR 5.5(c)(3)).

**I. Subcontracts.** The contractor will insert in each of his subcontracts the clauses contained in paragraphs A through H and J of this provision, 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 (29 CFR 5.5(a)(6), 5.5(c)(4)).

**J. Contract termination; debarment.** A breach of paragraphs A through I of this provision may be grounds for termination of the contract. A breach of paragraphs A through E and I may also be grounds for debarment as provided in 29 CFR 5.6 of the regulations of the Secretary of Labor (29 CFR 5.5(a)(7)).

[F.R. Doc. 64-12955; Filed, Dec. 17, 1964; 8:45 a.m.]