

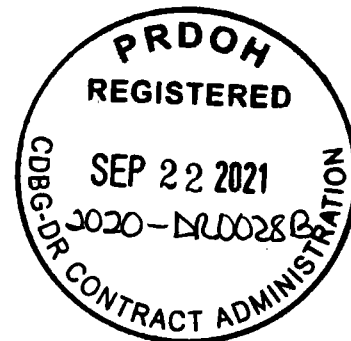


COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)

**AMENDMENT B TO AGREEMENT FOR
HOME REPAIR, RECONSTRUCTION, OR RELOCATION PROGRAM
CONSTRUCTION MANAGERS**

**BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND
THOMPSON CONSTRUCTION GROUP, INC.**

Contract No. 2020-DR0028
As amended by Contract No. 2020-DR0028A



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THIS AMENDMENT B TO AGREEMENT FOR HOME REPAIR, RECONSTRUCTION, OR RELOCATION PROGRAM CONSTRUCTION MANAGERS , (hereinafter referred to as the "Amendment") is entered into in San Juan, Puerto Rico, this 17 day of September, 2021, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (hereinafter, "PRDOH"), a public agency created under Law No. 97 of June 10, 1972, as amended, 3 L.P.R.A. § 441 *et seq.*, known as the Department of Housing Governing Act with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico, herein represented by William O. Rodríguez Rodríguez, attorney, of legal age, single, and resident of San Juan, Puerto Rico, in his capacity as Secretary; and **THOMPSON CONSTRUCTION GROUP, INC.** (hereinafter, the "CONTRACTOR"), with principal offices in 100 N. Main Street, Sumter, South Carolina, 29150, herein represented by Robert A. Roberts, in his capacity as an authorized representative, of legal age, married, and resident of Fairhope, Alabama, duly authorized by Resolution by the CONTRACTOR (collectively, the Parties).

I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on November 13, 2019, the PRDOH and the Contractor entered into an Agreement, which was registered under Contract No. 2020-DR0028, for the performance of Home Repair, Reconstruction, or Relocation Program Construction Managers in connection with the CDBG-DR Program (the "Agreement").

WHEREAS, the PRDOH and the Contractor, agreed that, for allowable construction management services performed during the term of the Agreement, PRDOH would pay a maximum amount not to exceed **FIFTY MILLION DOLLARS (\$50,000,000.00)**; to the Contractor from **ACCOUNT NUMBER R01H07RRR-DOH-LM 6090-01-000**.

WHEREAS, on May 27, 2021, the Agreement was amended through Amendment A, registered as Contract Number 2020-DR0028A, to increase the total amount by **THIRTY MILLION DOLLARS (\$30,000,000.00)** for an adjusted amount of **EIGHTY MILLION DOLLARS (\$80,000,000.00)**. The term of the Agreement was not modified in Amendment A.

WHEREAS, the Parties wish to amend the Agreement to increase the total amount by **ONE HUNDRED MILLION DOLLARS (\$100,000,000.00)** for an adjusted total amount of **ONE HUNDRED EIGHTY MILLION DOLLARS (\$180,000,000.00)**.

WHEREAS, this Amendment also conforms the Agreement to federal, state, and local regulations and statutes.

WHEREAS, this Amendment B is not intended to affect nor does it constitute an extinctive novation of the obligations of the parties under the Agreement but is rather a modification and amendment of certain terms and conditions under the Agreement.

WHEREAS, the Parties wish to amend the Agreement, as amended, and become subject to the terms of the Agreement, as amended, and this Amendment B.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the PRDOH and the CONTRACTOR agree as follows:

II. AMENDMENT:

A. The Parties agree to replace **Article IV. COMPENSATION AND PAYMENT**, paragraph B, with the following:

*B. The PRDOH will pay the CONTRACTOR, for allowable services performed during the term of this Agreement, a maximum amount not to exceed **ONE HUNDRED EIGHTY MILLION DOLLARS (\$180,000,000.00)**; Account Number: R01H07RRR-DOH-LM / R02H07-RRR-DOH-LM 6090-03-000.*

B. The Parties agree to replace **Article XXVII. SECTION 3 CLAUSE**, as follows:

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 75.

E. The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

F. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 75.

G. Noncompliance with HUD's regulations in 24 C.F.R. part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

H. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (46 U.S.C. § 5307) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

- I.** The Contractor agrees to submit, and shall require its subcontractors to submit to them, quarterly reports to the PRDOH detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 Workers and Targeted Section 3 Workers.

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- C. The Parties agree to add a new **Article LV. MEMORANDUM NO. 2021-029; CIRCULAR LETTER NO. 013-2021 OF THE OFFICE OF THE CHIEF OF STAFF OF THE GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO)**, as follows:

LV. MEMORANDUM NO. 2021-029; CIRCULAR LETTER NO. 013-2021 OF THE OFFICE OF THE CHIEF OF STAFF OF THE GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO):

- A. The PRDOH certifies that the CONTRACTOR was selected as the provider of the services described in this agreement, pursuant to OE 2021-029.
- B. The Parties certify that they acknowledge the provisions stated in OE 2021-029 and CC 013-2021. Any failure to comply with the requirements set forth in OE 2021-029 and CC 013-2021 will result in the termination of this agreement.
- C. The CONTRACTOR certifies that it has informed PRDOH of any current contractual relationship with any government entities of the Government of Puerto Rico. The CONTRACTOR certifies that said entities are all the entities of the Government of Puerto Rico with which they maintain a contractual relationship. In addition, the CONTRACTOR recognizes and accepts that omitting any information regarding any current contractual relationship with any governmental entity could result in the termination of this agreement if so required by PRDOH.
- D. The CONTRACTOR certifies that it has informed the PRDOH whether or not the entity is a public corporation whose shares are exchanged in a stock exchange properly regulated. In the event that the CONTRACTOR certifies that it is not a public corporation that exchanges shares in a stock change, the CONTRACTOR certifies it has completed the applicable certification as stated in CC-013-2021.

- D. The Parties agree to add a new **Article LVI. FEDERAL LAWS AND REGULATIONS APPLICABLE TO CONSTRUCTION CONTRACTS**, as follows:

LVI. FEDERAL LAWS AND REGULATIONS APPLICABLE TO CONSTRUCTION CONTRACTS:

A. COPELAND "ANTI-KICKBACK" ACT

Salaries of personnel performing work under this Agreement shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c).

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The CONTRACTOR shall provide a weekly statement with respect to the wages paid to each of its employees engaged on work covered by the Copeland "Anti-Kickback Act" during the preceding weekly payroll period.¹ The CONTRACTOR, shall deliver each weekly statement within seven days after the regular payment date of the payroll period, to the PRDOH. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the U.S. Department of Labor. The CONTRACTOR shall preserve his weekly payroll records for a period of 6 years from date of completion of this Agreement and also the Subrecipients must comply with the record retention requirements, as established in the policy on document handling, administration and accessibility, in accordance with the RKMA policy, and ensure that all documentations is always available for any internal or external tracing visit. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

The CONTRACTOR shall comply with all applicable "Anti-Kickback" regulations and shall insert HUD form 4010 and any additional provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations as applicable, and shall be responsible for the submission of affidavits and Statements of Compliance required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.²

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The CONTRACTOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (CWHSSA) (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or labors. The provisions of CWHSSA apply to all labors and mechanic, including watchmen and guards. 40 U.S.C. Section 3701(b)(2).

The CONTRACTOR agrees to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours in accordance with and subject to the provisions of the CWHSSA. Any work in excess of the standard work week is permissible provided that the worker is compensated at a rate of no less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The CONTRACTOR will not require any laborer or mechanic employed in the performance of this Agreement to work in surroundings or under working conditions that

¹ This statement shall be executed by the contractor or by an authorized officer or employee of the contractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/index.htm> or its successor site.

² <https://www.dol.gov/agencies/whd/government-contracts/copeland-anti-kickback>

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are unsanitary, hazardous, or dangerous to health or safety, as established under construction safety and health standards.

The CONTRACTOR shall insert appropriate provisions of the CWHSSA in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

The CONTRACTOR, as well as any subcontractors, shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.³

C. DAVIS-BACON ACT

The CONTRACTOR shall comply with the Davis Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by the CONTRACTOR, as well as any subcontractors, including employees of other governments, on construction, work assisted under this Agreement, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The advertised specifications for every contract in excess of \$2,000, for construction, alteration, or repair, including painting and decorating, of public buildings and public works. 40 U.S.C. Sec. 3142.⁴

The CONTRACTOR, as well as any subcontractors, shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics. The CONTRACTOR will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work.

There may be withheld from the CONTRACTOR so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

On a semi-annual basis, the CONTRACTOR shall submit Form HUD 4710 (Semi-Annual labor Standards Enforcement Report) to PRDOH.

³ <https://www.dol.gov/agencies/whd/government-contracts/cwhssa>

⁴ Section 110 of the Act, determines the DBRA applicability to CDBG-DR. The Act further provides that Section 5310 (Section 110 of the Act) apply to the rehabilitation of residential property only if such property contains not less than eight (8) units. (8 units or more)

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All covered subcontracts must include Davis-Bacon and other labor standards clauses and the applicable federal wage determinations as well as the local prevailing wage established in this contract. The Federal Labor Standards Provisions on Form HUD 4010 covers the Davis-Bacon and related acts expected in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

The HUD Form 4010 and a Spanish translation of the original form is included as **Attachment I** to this contract. The attachment ensures contractors, with a predominant fluency in Spanish, are able to immediately reference labor requirements to ensure full compliance for Davis-Bacon and related Acts. (See **Attachment 1** of this Amendment B)

D. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The CONTRACTOR shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

E. FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

The CONTRACTOR shall comply with the provisions of the Fair Labor Standards Act (29 U.S.C. §§ 201-219), which governs such matters as Federal minimum wage rates and overtime, as supplemented by the Department of Labor regulations (29 C.F.R. Parts 500-899).

The CONTRACTOR agrees to comply and implement the applicable regulations of the U.S. Department of Labor at 29 C.F.R. Parts 500-899.⁵

- E. The Parties agree to add a new **Article LVII. COMPLIANCE WITH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (FOMB) POLICY: REVIEW OF CONTRACTS, AS MODIFIED ON APRIL 30, 2021, REGARDING PROFESSIONAL SERVICES**, as follows:

LVII. COMPLIANCE WITH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (FOMB) POLICY: REVIEW OF CONTRACTS, AS MODIFIED ON APRIL 30, 2021, REGARDING PROFESSIONAL SERVICES:

The FOMB Policy requires that all agreements that contemplate recurring professional services that may be performed by

⁵ <https://www.dol.gov/agencies/whd/flsa>

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appropriately trained government staff include a provision of compliance with the adequate transfer of skills and technical knowledge to the pertinent public sector personnel. This requirement shall not apply to contracts which contemplate non-recurring professional services or specialized professional services that may not be performed by existing staff at the applicable governmental entity, including as a result of independence requirements.

Accordingly, given that the agreements under CDBG-DR are non-recurring professional services or specialized professional services, the PRDOH certifies that the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.

As mentioned before, HUD allocated funds for disaster recovery assistance to the Government of Puerto Rico under the CDBG-DR Program. These funds are intended to provide financial assistance to address unmet needs that arise and that are not covered by other sources of financial aid. In addition, with these allocations of funding under the Grant Agreement, the PRDOH will conduct a comprehensive recovery to benefit the residents of Puerto Rico.

- F. The Parties agree to add a new **Article LVIII. COMPLIANCE WITH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (FOMB) POLICY: REVIEW OF CONTRACTS**, as follows:

LVIII. COMPLIANCE WITH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (FOMB) POLICY, REVIEW OF CONTRACTS:

As part of the PRDOH contract process, and pursuant to Section 204(b)(2) of the "Puerto Rico Oversight, Management, and Economic Stability Act," 48 U.S.C. §2101, et seq., also known as "PROMESA", the Financial Oversight and Management Board for Puerto Rico (FOMB) require approval of certain contracts and amendments to assure that they "promote market competition" and "are not inconsistent with the approved fiscal plan." For the approval process, the FOMB requests, among other information, the Contractor Certification Requirement for its evaluation.

In compliance with the above, the CONTRACTOR represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the contract null and void and CONTRACTOR will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed Amendment and original Agreement.

- G. All other terms and conditions of the Agreement remain unchanged.
- H. Each party represents that the person executing this Amendment B has the necessary legal authority to do so on behalf of the respective party.

III. HEADINGS

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The titles to the paragraphs of this Amendment are solely for reference purposes and the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Amendment.

IV. COMPLIANCE WITH LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in the Agreement, as amended, should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then the Agreement, as amended, shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

V. SUBROGATION

The Contractor acknowledges that funds provided through the Agreement, as amended, are Federal funds administered by HUD under the CDBG-DR Program and that all funds provided by the Agreement, as amended, are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation, however, the Contractor shall promptly return any and all funds to the PRDOH, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of the Agreement, as amended.

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VI. COMPTROLLER REGISTRY

The PRDOH shall remit a copy of this Amendment to the Office of the Comptroller for registration within **fifteen (15)** days following the date of execution of this Amendment and any subsequent amendment hereto. The services object of this Amendment may not be invoiced or paid until this Amendment has been registered by the PRDOH at the Comptroller's Office, pursuant to Act No. 18 of October 30, 1975, as amended by Act No. 127 of May 31, 2004.

VII. ENTIRE AGREEMENT

The Agreement and this Amendment constitute the entire agreement among the Parties for the use of funds received under the Agreement and this Amended Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the Parties with respect to the agreement.

VIII. SEVERABILITY

If any provision of this Amendment shall operate or would prospectively operate to invalidate the Amendment in whole or in part, then such provision only shall be deemed severed and the remainder of the Amendment shall remain operative and in full effect.

IX. COUNTERPARTS

This Amendment may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument. If the Amendment is not executed by the PRDOH within **thirty (30) days** of execution by the other party, this Amendment shall be null and void.

[Remainder of page left blank intentionally]

IN WITNESS THEREOF, the parties hereto execute this Amendment in the place and on the date first above written.

PUERTO RICO DEPARTMENT OF HOUSING

**THOMPSON CONSTRUCTION GROUP,
INC.**

William O. Rodríguez Rodríguez

William O. Rodríguez Rodríguez (Sep 17, 2021 15:40 EDT)

William O. Rodríguez Rodríguez, Esq.,

Secretary

Tax ID No. 660-55-8579

Robert A. Roberts

Robert A. Roberts (Sep 16, 2021 14:47 CDT)

Robert A. Roberts

Authorized Representative

Tax ID No. 57-0836917

DUNS No. 154215818

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Attachment 1 of Amendment B

Federal Labor Standards Provisions

U.S. Department of Housing
and Urban Development
Office of Labor Relations

Attachment I

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. 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 such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); 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 29 CFR 5.5(a)(4). 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 29 CFR 5.5(a)(1)(ii) 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.

(ii) (a) 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor 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; and

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee 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 HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) 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.

(iii) 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.

(iv) 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.)

2. Withholding. HUD or its designee 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 the work, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 29 CFR 5.5 (a)(1)(iv) 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 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.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) 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:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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(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 29 CFR Part 3;

(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.

(c) 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 A.3.(ii)(b).

(d) 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.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee 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.

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4. Apprentices and Trainees.

(i) **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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

(ii) **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 determination for the 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.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. 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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, 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 this paragraph.

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7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. 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

9. 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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. 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) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) 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 the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and 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 subparagraph (1) of this paragraph, 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 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee 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 moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, 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 subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors 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 subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

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(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

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(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Aplicabilidad

El proyecto o programa al que pertenece la obra de construcción objeto de este contrato recibe la asistencia de los Estados Unidos de América y las siguientes Disposiciones Federales sobre Normas Laborales se incluyen en este contrato, de conformidad con las disposiciones que correspondan para dicha asistencia federal.

A. 1. (i) Salarios mínimos. Todos los obreros y mecánicos empleados o que trabajen en el sitio de la obra recibirán un pago incondicional y no menos de una vez por semana, y sin una deducción o reembolso posteriores de o a cuenta alguna (excepto las deducciones de nómina permitidas por normatividad que dicte el Secretario del Trabajo con apego a la ley Copeland [Parte 3 del 29 del Código de Regulaciones Federales o CFR, por sus siglas en inglés]), el monto total de los salarios y prestaciones laborales marginales (o sus equivalentes en efectivo) adeudados al momento del pago, calculados a tasas no inferiores a las que figuran en la determinación salarial del Secretario de Trabajo que se adjunta e integra al presente, independientemente de cualquier relación contractual que pudiera presumirse que existe entre el contratista y tales obreros y mecánicos. Las contribuciones hechas o los costos razonablemente anticipados para las prestaciones laborales marginales conforme a la Sección I (b)(2) de la ley de Davis-Bacon en favor de los obreros o los mecánicos, se consideran como salarios pagados a tales trabajadores o mecánicos, con apego a las disposiciones de la sección 5.5(a)(1)(iv) del 29 del CFR; además, las contribuciones corrientes hechas o los costos incurridos por más de un período semanal (pero no con menos frecuencia que trimestralmente) al amparo de planes, fondos o programas que comprendan el período semanal específico, implícitamente se consideran como hechas o incurridas durante dicho período semanal.

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A tales obreros y mecánicos se les pagarán la tasa salarial y las prestaciones laborales marginales de la determinación salarial para la clasificación del trabajo de hecho realizado, independientemente de la destreza, excepto según lo dispuesto en la 5.5(a)(4) del 29 del CFR. Los obreros o mecánicos que realicen trabajo que corresponda a más de una clasificación pueden compensarse a la tasa especificada para cada clasificación por el tiempo de hecho trabajado en ellas: siempre y cuando los registros de nómina del empleador establezcan con precisión el tiempo dedicado a cada clasificación en la que el trabajo se realiza. En todo momento, el contratista y sus subcontratistas mantendrán colocada la determinación salarial (incluyendo cualquier clasificación y tasa salarial adicionales conformadas al amparo de la sección 5.5(a)(1)(ii) del 29 del CFR y el cartel de la ley Davis-Bacon, WH-1321) en el sitio de la obra, en un lugar prominente y accesible donde los trabajadores puedan verlo con facilidad.

(ii) (a) Toda clase de obreros o mecánicos que no esté indicada en la determinación salarial y que deba emplearse al amparo del contrato se clasificará de conformidad con la determinación salarial. El Departamento de Vivienda y Desarrollo Urbano (HUD, por sus siglas en inglés) aprobará una clasificación adicional, y la tasa salarial y las prestaciones laborales marginales de la misma, únicamente cuando se hayan satisfecho los siguientes criterios:

- (1) El trabajo a realizarse en virtud de la clasificación solicitada no se realiza en virtud de una clasificación de la determinación salarial; y
 - (2) La industria de la construcción utiliza la clasificación en la zona; y
 - (3) La tasa salarial propuesta, incluyendo toda prestación laboral marginal, tiene una relación razonable con las tasas salariales contenidas en la determinación salarial.
- (b) Si el contratista, los obreros y los mecánicos a emplearse dentro de la clasificación (si se conoce), o sus representantes, y el HUD o su delegado se ponen de acuerdo en cuanto a la clasificación y la tasa salarial (incluyendo el monto designado para prestaciones laborales marginales, cuando así corresponda), se enviará un informe sobre la medida tomada al HUD o a su delegado, a: Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. El Administrador, o un representante autorizado, aprobará, modificará o desaprobará cada medida de clasificación adicional en un plazo de 30 días a partir de su recibo, y así se lo hará saber al HUD o a su delegado, o les notificará dentro de ese período de 30 días que necesita tiempo adicional (aprobado por la Oficina de Administración y Presupuesto, con el número de control 1215-0140).
- (c) En caso de que el contratista, los obreros o los mecánicos empleados dentro de la clasificación, o sus representantes, y el HUD o su delegado no se pongan de acuerdo en cuanto a la clasificación propuesta y la tasa salarial (incluyendo el monto designado para las prestaciones laborales marginales, cuando así corresponda), el HUD o su delegado remitirán al Administrador las preguntas, incluyendo su recomendación y las opiniones de todas las partes interesadas, para que tome una determinación. El Administrador, o un representante autorizado, dictará una determinación en un plazo de 30 días a partir de su recibo, y así se lo hará saber al HUD o a su delegado, o les notificará dentro de ese período de 30 días que necesita tiempo adicional (aprobado por la Oficina de Administración y Presupuesto, con el número de control 1215-0140).
- (d) La tasa salarial (incluyendo las prestaciones laborales marginales, cuando así corresponda) determinada de conformidad con los subincisos (1)(ii)(b) o (c) de este apartado, se pagará a todos los trabajadores que desempeñen un trabajo dentro de la clasificación que contemple este contrato, desde el primer día en el que se realicen trabajos dentro de la clasificación.
- (iii) Siempre que el salario mínimo prescrito en el contrato para una clase dada de obreros o mecánicos incluye una prestación laboral marginal que no se expresa en la forma de una tarifa por hora, el contratista pagará la prestación como se indica en la determinación salarial, o pagará otra prestación laboral marginal o su equivalente en efectivo por hora.
- (iv) Si no realiza pagos a un fideicomisario u otro tercero, el contratista puede considerar como parte del salario de cualquier obrero o mecánico el importe de todo costo que razonablemente se anticipe en la prestación de prestaciones laborales marginales al amparo de un plan o programa, siempre y cuando el Secretario del Trabajo haya

determinado, a solicitud por escrito del contratista, que se cumplió con las normas correspondiente de la ley Davis-Bacon. El Secretario del Trabajo puede exigir que el contratista reserve en una cuenta aparte, recursos para satisfacción de la obligaciones conforme al plan o programa (aprobado por la Oficina de Administración y Presupuesto, con el número de control 1215-0140).

2. Retención. El HUD o su delegado, a su propio recurso o al solicitario por escrito un representante autorizado del Departamento del Trabajo, retendrán o verán que se le retenga al contratista, con apego a este o a cualquier otro contrato federal que se tenga con el mismo contratista principal, o a cualquier otro contrato que reciba asistencia federal en virtud de los requisitos salariales de la ley Davis-Bacon imperantes y que tenga el mismo contratista principal, tanto de los pagos o adelantos acumulados como se considere necesario para pagar a los obreros y mecánicos (incluidos los aprendices, trabajadores en capacitación y ayudantes) empleados por el contratista o por cualquier subcontratista el importe total de los salarios que exija el contrato, en caso de que no pague a alguno de ellos que esté empleado o trabajando en el sitio de la obra, nada o parte de los salarios que exija el contrato. El HUD o su delegado pueden, tras dar aviso por escrito al contratista, promotor, solicitante o propietario, actuar del modo que pudiera ser necesario para suscitar la suspensión de cualquier otro pago, adelanto o promesa de fondos adicionales, hasta que cesen tales contravenciones. El HUD o su delegado pueden, tras dar aviso por escrito al contratista, desembolsar dichos montos retenidos por y a cuenta del contratista o subcontratista a los empleados respectivos a quienes se los adeudan. La Contraloría General hará tales desembolsos en el caso de los contratos directos de la ley Davis-Bacon.

3. (i) Nóminas y registros básicos. Las nóminas y los registros básicos relacionados con ellas serán llevados por el contratista durante el transcurso de la obra y a conservarse por un período de tres años después para todos los obreros y mecánicos que trabajen en el sitio de la obra. Dichos registros contendrán el nombre, la dirección y el número de Seguro Social de cada trabajador tal, así como su clasificación correcta, salario pagado por hora (incluyendo las tasas de las contribuciones o costos anticipados para las prestaciones laborales marginales o sus equivalentes en efectivo, de los tipos descritos en la sección 1(b)(2)(B) de la ley Davis-Bacon, el número diario y semanal de horas trabajadas, las deducciones hechas, y los salarios reales pagados. Siempre que el Secretario del Trabajo determine, conforme a la sección 5.5(a)(1)(iv) del 29 del CFR, que los salarios de un obrero o mecánico incluyen el monto de algún costo razonablemente anticipado en la prestación de prestaciones al amparo de un plan o programa que se describa en la Sección 1(b)(2)(B) de la Ley Davis-Bacon, el contratista mantendrá registros que demuestren que la promesa de prestarlos es exigible, que el plan o programa es financieramente responsable, y que el plan o programase les ha comunicado por escrito a los obreros o mecánicos afectados, así como registros que indiquen los costos anticipados o el costo real incurrido en su prestación. Los contratistas que emplean aprendices o

trabajadores en capacitación al amparo de programas aprobados mantendrán pruebas escritas del registro de los programas para aprendices y la certificación de aquellos para trabajadores en capacitación, el registro de los aprendices y trabajadores en capacitación, y las proporciones y tasas salariales prescritas en los programas pertinentes (aprobado por la Oficina de Administración y Presupuesto, con los números de control 1215-0140 y 1215-0017).

(ii) (a) El contratista remitirá semanalmente, por cada semana en la que se realice algún trabajo del contrato, una copia de todas las nóminas al HUD, o a su delegado si la entidad es una de las partes del contrato; pero si no lo es, el contratista remitirá las nóminas al solicitante, promotor o propietario, según sea el caso, para su subsiguiente remisión al HUD o a su delegado. Las nóminas remitidas establecerán con precisión y a cabalidad toda la información que deba mantenerse conforme a la sección 5.5(a)(3)(i) del 29 del CFR, excepto que no se incluirán números de Seguro Social ni domicilios completos en las remisiones semanales. En cambio, las nóminas solo deberán incluir un número de identificación individual para cada empleado (por ejemplo, los últimos cuatro dígitos de su número de Seguro de Social). Los datos de nómina semanales necesarios pueden enviarse de cualquier forma que se desee. El formulario opcional WH-347 está disponible para este propósito en el sitio de internet de la Sección de Salarios y Horarios Laborales, en <http://www.dol.gov/esa/whd/forms/wh347instr.htm>, o en el sitio que le sigue. El contratista principal es responsable de presentar copias de las nóminas de todos los subcontratistas. Los contratistas y subcontratistas mantendrán el número de Seguro Social completo y la dirección actual de cada uno de los trabajadores contemplados, y deberán proporcionarlos al HUD o a su delegado cuando se le soliciten si la entidad es una de las partes del contrato, pero si no es una parte tal, el contratista remitirá las nóminas al solicitante, promotor o propietario, según sea el caso, para su remisión subsiguiente al HUD o su delegado, al contratista, o a la Sección de Salarios y Horarios Laborales del Departamento de Trabajo para fines de una investigación o auditoría sobre la observancia de los requisitos salariales vigentes. Que un contratista principal exija a un subcontratista que le proporcione las direcciones y números de Seguro Social para incluirlos en los registros propios, sin una remisión semanal al HUD o a su delegado, no constituye una contravención de este subinciso (aprobado por la Oficina de Administración y Presupuesto, con el número de control 1215-0149).

(b) Cada nómina remitida deberá ir acompañada de una "Declaración de Cumplimiento" firmada por el contratista o subcontratista (o su representante) que paga o supervisa el pago de las personas empleadas en virtud del contrato, y deberá certificar lo siguiente:

(1) que la nómina para el período de nómina contiene la información que debe proporcionarse conforme a la sección 5.5(a)(3)(ii) del 29 del CFR, que la información debida se mantiene conforme a la sección 5.5(a)(3)(i) del 29 del CFR, y que dicha información es correcta y completa;

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(2) que a cada obrero o mecánico (incluyendo cada ayudante, aprendiz y trabajador en capacitación) empleados en el contrato durante el período de nómina se le ha pagado el salario semanal devengado completo, sin descuentos, ya sean directos o indirectos, y que no se ha realizado ninguna deducción directa ni indirecta de los salarios devengados completos, aparte de las permitidas según se establece en la Parte 3 del 29 del CFR; y

(3) que a cada obrero o mecánico se le ha pagado no menos de la tasa salarial y las prestaciones laborales marginales correspondientes, o su equivalente en efectivo para la clasificación que corresponde al trabajo realizado, como se especifica en la determinación salarial pertinente incorporada al contrato.

(c) La presentación semanal de una certificación debidamente firmada que se establece al reverso del formulario opcional WH-347 satisfará el requisito de remisión de la "Declaración de Cumplimiento" que exige el subinciso A.3.(ii)(b).

(d) La falsificación de cualquiera de las certificaciones anteriores puede hacer al contratista o subcontratista sujeto de un encausamiento civil o penal, conforme a la Sección 1001 del Título 18 y a la Sección 231 del Título 31 del Código de los Estados Unidos.

(iii) El contratista o el subcontratista pondrán los registros que exige el subinciso A.3.(i) a disposición de los representantes del HUD o de su delegado, o del Departamento del Trabajo, para su inspección, fotocopiado o transcripción, y permitirán que dichos representantes entrevisten a los empleados durante el horario hábil en el trabajo. Si el contratista o el subcontratista no entregan los registros necesarios o no los ponen a su disposición, el HUD o su delegado pueden, después de dar aviso por escrito al contratista, promotor, solicitante o propietario, tomar las medidas que sean necesarias para suscitar la suspensión de cualquier otro pago, adelanto o promesa de fondos adicionales. Además, no entregar los registros necesarios al solicitarseles o para ponerlos a su disposición puede ser motivo de inhabilitación, de conformidad con la sección 5.12 del 29 del CFR.

4. Aprendices y trabajadores en capacitación.

(i) **Aprendices.** A los aprendices se les permitirá trabajar a menos de la tasa predeterminada para la labor que realizaron cuando se les emplee de conformidad con, y se les registre individualmente en, un programa de aprendices registrado ante la Oficina de Servicios Patronales, Laborales y de Capacitación para Aprendices de la Administración de Empleo y Capacitación del Departamento del Trabajo de los Estados Unidos, o ante una Agencia Estatal de Aprendizaje reconocida por la Oficina, o si una persona es empleada dentro de sus primeros 90 días de trabajo a prueba como aprendiz en un programa de aprendices tal y no está registrada de forma individual en el programa, pero recibió la certificación de la Oficina o de una Agencia de Aprendizaje Estatal (cuando corresponda) como admisible para trabajar a prueba en calidad de aprendiz. La relación permitida de aprendices a jornaleros en el sitio de la obra dentro de cualquier clasificación de oficios no deberá sobrepasar la permitida al contratista para toda la plantilla, conforme al programa registrado. Cualquier trabajador incluido en una nómina con una tasa salarial de aprendiz que no esté registrado o de otro modo empleado como se indicó anteriormente, recibirá como pago no menos que la tasa salarial correspondiente de la determinación salarial para la

clasificación del trabajo de hecho realizado. Además, a cualquier aprendiz que trabaje en el sitio de la obra excediendo la proporción permitida por el programa registrado se le pagará no menos que la tasa salarial correspondiente de la determinación salarial para el trabajo de hecho realizado. Cuando un contratista está construyendo para un proyecto en una localidad que no sea aquella en la que su programa esté registrado, habrán de observarse las proporciones y las tasas salariales (expresadas en porcentajes del salario por hora del jornalero) especificadas en el programa del contratista o subcontratista. A cada aprendiz deberá pagársele no menos que la tasa especificada en el programa registrado para su nivel de progreso, expresada como un porcentaje del salario por hora del jornalero especificada en la determinación salarial correspondiente. A los aprendices se les pagarán las prestaciones laborales marginales de acuerdo con las disposiciones del programa de aprendices. Si el programa de aprendices no especifica las prestaciones laborales marginales, a los aprendices se les debe pagar el monto total de los mismos que se indica en la determinación salarial para la clasificación correspondiente. Si el Administrador determina que impera una práctica diferente para la clasificación de aprendiz pertinente, las prestaciones se pagarán de acuerdo con dicha determinación. En caso de que la Oficina de Servicios Patronales, Laborales y de Capacitación para Aprendices o una Agencia Estatal de Aprendizaje reconocida por ella se retracte de la aprobación de un programa de aprendices, al contratista ya no se le permitirá utilizar aprendices a menos de la tasa predeterminada correspondiente para la labor realizada, hasta que se apruebe un programa aceptable

(ii) **Trabajadores en capacitación.** A excepción de lo dispuesto en la sección 5.16 del 29 del CFR, a los trabajadores en capacitación no se les permitirá laborar a menos que la tasa predeterminada para el trabajo realizado, a menos que se les emplee de conformidad con, y se les registre individualmente en, un programa que haya recibido una aprobación previa, según se demuestre mediante la certificación formal de la Administración de Empleo y Capacitación del Departamento del Trabajo de los Estados Unidos. La proporción de trabajadores en capacitación a jornaleros en el sitio de la obra no será mayor que la permitida por el plan aprobado por la Administración de Empleo y Capacitación. A cada trabajador en capacitación debe pagársele a no menos de la tasa especificada en el programa aprobado para su nivel de progreso, expresado como un porcentaje del salario por hora del jornalero especificada en la determinación salarial correspondiente. A los trabajadores en capacitación se les pagarán prestaciones laborales marginales de acuerdo con las disposiciones del programa de trabajadores en capacitación. Si el programa de trabajadores en capacitación no menciona prestaciones laborales marginales, a los trabajadores en capacitación se les pagará el monto total de los mismos que se indica en la determinación salarial, a menos que el administrador de la Sección de Salarios y Horarios Laborales determine que existe un programa de aprendices relacionado con el salario correspondiente para los jornaleros en la determinación salarial, que contemple menos que las prestaciones laborales marginales completas para los aprendices. A todo empleado listado en la nómina con un salario de aprendiz que no esté registrado y participando en un plan de capacitación aprobado por la Administración de Empleo y Capacitación se le pagará no menos que la tasa salarial correspondiente de la determinación salarial para el trabajo de hecho realizado. Además, a

excediendo la proporción permitida por el programa registrado se le pagará no menos que la tasa salarial correspondiente de la determinación salarial para el trabajo de hecho realizado. En caso de que la Administración de Empleo y Capacitación se retracte de la aprobación de un programa de capacitación, al contratista ya no se le permitirá utilizar trabajadores en capacitación a menos de la tasa predeterminada correspondiente para la labor realizada, hasta que se apruebe un programa aceptable.

(iii) **Igualdad de oportunidades en el empleo.** La utilización de aprendices, trabajadores en capacitación y jornaleros, según la Parte 5 del 29 del CFR, se conformará a los requisitos de igualdad de oportunidades en el empleo de la Orden Ejecutiva 11246 y sus enmiendas, y la Parte 30 del 29 del CFR.

5. Cumplimiento de los requisitos de la ley Copeland. El contratista deberá cumplir con los requisitos de la Parte 3 el 29 del CFR que se incorporan, por referencia, en este contrato.

6. Subcontratistas. El contratista o subcontratista insertará en todo subcontrato las cláusulas contenidas en los subincisos 1 al 11 de este inciso A y otras cláusulas tales que el HUD o su delegado pudieran exigir mediante las instrucciones debidas, así como una copia de la decisión sobre el salario vigente correspondiente, además de una cláusula exigiendo que los subcontratistas incluyan estas en cualquier subcontratos de nivel inferior. El contratista principal será responsable de que cualquier subcontratista o subcontratista de nivel inferior acate todas las cláusulas contractuales de este inciso.

7. Rescisión del contrato; inhabilitación. El incumplimiento de las cláusulas contractuales que constan en la sección 5.5 del 29 del CFR puede ser motivo de rescisión del contrato e inhabilitación como contratista y subcontratista, según lo dispuesto en la sección 5.12 del 29 del CFR.

8. Cumplimiento de los requisitos de la ley Davis-Bacon y otros relacionados. Todo fallo e interpretación de la ley Davis-Bacon y otras afines contenido en las Partes 1, 3 y 5 del 29 del CFR se incorporan aquí, por referencia, en este contrato.

9. Disputas sobre normas laborales. Las disputas que surjan de las disposiciones sobre normas laborales que establece este contrato no estarán sujetas a su cláusula sobre disputas generales. Tales disputas se resolverán de acuerdo con los procedimientos del Departamento del Trabajo que se establecen en las Partes 5, 6 y 7 del 29 del CFR. Las disputas, en el sentido de esta cláusula, incluyen aquellas surgidas entre el contratista (o cualquiera de sus subcontratistas) y el HUD o su delegado, el Departamento del Trabajo de los Estados Unidos, o los empleados o sus representantes.

10. (i) Certificación de la elegibilidad. Al suscribir este contrato, el contratista certifica que ni la suya (ni él o ella) ni ninguna persona o empresa que tenga un interés en su empresa es una persona o empresa inadmisibles para recibir contratos del gobierno en virtud de la Sección 3(a) de la ley Davis-Bacon o de la sección 5.12(a)(1) del 29 del CFR, o para recibir contratos del HUD o participar en sus programas, de conformidad con la Parte 24 del 24 del CFR.

(ii) Ninguna parte de este contrato se subcontratará a persona o firma inadmisibles alguna para recibir un contrato de gobierno en virtud de la Sección 3(a) de la ley de Davis-Bacon o de la sección 5.12(a)(1) del 29 del CFR, o para recibir contratos del HUD o participar en sus programas, de conformidad con la Parte 24 del 24 del CFR.

(iii) La sanción por hacer declaraciones falsas está prescrita en el Código Penal de los Estados Unidos, sección 1001 del 18 del Código de los Estados Unidos (U.S.C., por sus siglas en inglés). Además, el Código Penal de los Estados Unidos, en la Sección 1 01 0 del Título 18 del U.S.C., "Transacciones de la Administración Federal de Vivienda", establece, en parte, que: "Quienquiera que, con el propósito de... influir en modo alguno en la actuación de dicha administración... haga, profiera o publique una declaración sabiendo que es falsa... será multado por no más de \$5,000 o encarcelado por no más de dos años, o ambas cosas".

11. Reclamaciones, acciones judiciales o testimonios de los empleados. Ningún obrero o mecánico para quien corresponda el sueldo, salario u otras disposiciones laborales de este contrato será despedido ni de ningún otro modo discriminado por el contratista o por subcontratista alguno por haber presentado una queja, o entablado o hecho que se entable algún proceso judicial, ni por haber testificado, o estar por hacerlo, testificar en algún proceso judicial al amparo de, o en relación con las normas laborales correspondientes en virtud de este contrato para su empleador.

B. Ley de Horas de Trabajo y Normas de Seguridad Contractuales. Las disposiciones del presente inciso B corresponden cuando el monto del contrato principal pasa de \$100,000. Del modo que se usan en este inciso, los términos "obreros" y "mecánicos" incluyen a vigilantes y guardias de seguridad.

(1) **Requisitos de horas extra.** Ningún contratista o subcontratista contratado para realizar parte alguna del trabajo del contrato que pudiera necesitar o implicar el empleo de obreros o mecánicos exigirá ni permitirá que un trabajador o mecánico tal, en cualquier semana laboral en la que se emplee al individuo para realizar dicho trabajo, labore más de 40 horas en esa semana laboral, a menos que dicho trabajador o mecánico sea compensado a una tasa no menor que una y media veces el salario básico por todas las horas trabajadas después de las 40 horas en esa semana laboral.

(2) **Contravención; responsabilidad por salarios impagos; liquidación de daños y perjuicios.** En caso de cometerse alguna contravención a la cláusula establecida en el subinciso (1) de este apartado, el contratista y cualquier subcontratista responsable deberán responder por los salarios impagos. Además, dicho contratista y subcontratista serán responsables ante los Estados Unidos (en el caso de trabajo realizado en virtud de un contrato para el Distrito de Columbia o un territorio de dicho Distrito, o para dicho territorio) de la liquidación de daños y perjuicios. Tal liquidación de daños y perjuicios se calculará con respecto a cada obrero o mecánico individual, incluidos los vigilantes y guardias de seguridad, empleado en contravención de la cláusula establecida en el subinciso (1) de este apartado, por la suma de \$10 por cada día natural en el que dicho individuo se le haya exigido o permitido trabajar más de la semana laboral normal de 40 horas sin el pago de horas extra que exige la cláusula establecida en el subinciso (1) de este apartado.

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(3) **Retención de salarios impagos, y para la liquidación de daños y perjuicios.** El HUD o su delegado, a su propio recurso o al solicitario por escrito un representante autorizado del Departamento del Trabajo, retendrán o verán que se retenga, de cualquier dinero pagadero por el trabajo realizado por el contratista o por el subcontratista en virtud de cualquier contrato tal o de cualquier otro de carácter federal que se tenga con el mismo contrato principal, o de cualquier otro contrato que reciba asistencia federal supeditada a la ley de Horas de Trabajo y Normas de Seguridad Contractuales y que tenga el mismo contratista principal, las sumas que se determinen como necesarias para saldar cualquier responsabilidad de dicho contratista o subcontratista por concepto de salarios impagos y liquidación de daños y perjuicios, según lo dispuesto en la cláusula establecida en el subinciso (2) de este apartado.

(4) **Subcontratos.** El contratista o subcontratista insertará en todo subcontrato las cláusulas establecidas en los subincisos (1) al (4) de este apartado, y también una cláusula exigiendo que los subcontratistas incluyan estas en cualquier subcontrato de nivel inferior. El contratista principal será responsable de que cualquier subcontratista o subcontratista de nivel inferior acate todas las cláusulas establecidas en los subincisos (1) al (4) de este apartado.

C. Salud y seguridad. Las disposiciones del presente inciso C corresponden cuando el monto del contrato principal pasa de \$100,000.

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RAR (1) Ningún obrero o mecánico tendrá que trabajar en los alrededores ni en condiciones laborales que sean insalubres, riesgosas o peligrosas para su salud y seguridad, según se determine conforme a las normas de seguridad y salud para la construcción promulgadas por el Secretario de Trabajo por reglamento.

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WORR (2) El Contratista acatará toda reglamentación dictada por el Secretario de Trabajo, de conformidad con la Parte 1926 del Título 29, y no hacerlo puede acarrear la imposición de sanciones, de conformidad con la ley de Horas de Trabajo y Normas de Seguridad Contractuales (ley pública 91-54, sección 96 del 83 de la Legislación Compilada de los Estados Unidos). Sección 3701 del 40 del U.S.C., y las siguientes.

(3) El contratista incluirá las disposiciones de este inciso en cada subcontrato, de modo que serán vinculantes para cada subcontratista. El contratista tomará tales medidas con respecto a cualquier subcontratista que el Secretario de Vivienda y Desarrollo Urbano o el Secretario del Trabajo ordenen como una forma de hacer cumplir tales disposiciones.









Amendment B to CMs Thompson Construction Group, Inc.

Final Audit Report

2021-09-17

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