

SBA Policy and Procedures
APPENDIX J

(PART 2 –SUPPLEMENTAL GENERAL CONDITIONS)

THE FOLLOWING SBA SUPPLEMENTAL CONDITIONS CHANGE, DELETE FROM OR ADD TO THE “GENERAL CONDITIONS” OF THE CONTRACT AIA DOCUMENT A201 AND SHALL BE INCORPORATED INTO THE PROJECT MANUAL. THIS DOCUMENT SHALL BE PRINTED ON NON-WHITE PAPER TO BE DISTINGUISHED FROM OTHER SPECIFICATION PAGES.

ARTICLE 1 – GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 The Contract Documents

Delete the last sentence and add the following:

The Contract Documents also include Bidding Requirements, (Advertisement to Bid, Instructions to Bidders, Supplemental Instructions to Bidders, sample forms, and the portions of the addenda relating to bidding requirements), the Contractor’s Bid, Bid Bond, Contractor’s Qualification Statement, List of Subcontractors, Equipment/Material Suppliers, and other documents listed in the Agreement.

Add the following Section:

1.1.9 Litigation

Litigation refers to a civil action instituted in the Circuit Court in the County in which the Project is located.

ARTICLE 3 – CONTRACTOR

3.7 Permits, Fees, Notices and Compliances with Laws

Add the following Section:

3.7.6 For the Owner’s records, Contractor shall submit copies of permits, licenses, certifications, inspection reports, releases, notices, receipt for fee payments, correspondence and records established in conjunction with compliance with standards and regulations bearing upon performance of the work.

3.9 Superintendent

Add the following Section:

3.9.4 The General Trades Contractor’s on site project Superintendent is to provide full-time project supervision and who is not to perform work with tools or equipment.

3.10 Contractor’s Construction Schedules

Delete Section 3.10.1 in its entirety and substitute the following:

3.10.1 The Contractor, prior to submission of the second pay application, shall prepare and submit for the owner’s and architect’s information, a contractor’s construction schedule for the work in accordance with the requirements of SBA Form 187. The schedule shall not exceed the time limits as defined in the contract documents and shall update or revise every 30 days. Thereafter, all Prime Contractors shall review and provide written approval of the construction schedule and each subsequent revision thereof. The schedule shall be related to the entire

project to the extent required by the contract documents, and shall provide for expeditions and practicable execution of the work.

3.18 Indemnification

Delete Section 3.18.1 in its entirety and substitute the following:

3.18.1 The Contractor agrees to indemnify and hold harmless the Owner, the Architect, the Architect's consultants, and the officers, principals, shareholders, agents and employees, of any of them from and against all claims, demands, actions, causes of action, damages, losses, fines, civil penalties, and expenses, including but not limited to attorney's fees, arising or resulting (or alleged to arise or result), in whole or in part, from the performance of the Work or from any act or omission of the Contractor, a Subcontractor, a Sub-subcontractor, or any other person furnishing labor, services, materials or equipment with respect to the Work as well as anyone employed directly or indirectly by them or anyone for whose acts or omissions they may be liable, regardless of whether such claim, demand, action, cause of action, damage, loss, fine, civil penalty or expense may have or is alleged to have arisen or resulted from an act or omission of any party indemnified hereunder; provided, however, Contractor's obligations hereunder shall not be construed to apply to any claim, demand, action, cause of action, damage, loss, fine, civil penalty or expense arising solely from the negligence of any person indemnified hereunder. Contractor's indemnity obligation set forth above shall extend to the claim of any employee of the Contractor, of a Subcontractor, a Sub-subcontractor, or any other person furnishing labor, services, materials, or equipment with respect to the Work, of anyone employed directly or indirectly by them or of anyone for whose acts they may be liable. Contractor's indemnity obligations shall survive termination of this Agreement.

Delete Section 3.18.2 in its entirety and substitute the following:

3.18.2 In claims against any person or entity indemnified under this Section 3.18 made by an employee of the Contractor, a Subcontractor, a Sub-subcontractor, or any other person furnishing labor, services, materials, or equipment with respect to the Work, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section 3.18 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT

4.2 Administration of the Contract

Revise the first sentence of Section 4.2.2 to read as follows:

4.2.2 The project Architect/Engineer responsible for the design of the facility shall attend a minimum of one (1) construction progress meeting each month, to become generally familiar with the progress and quality of the portion of the work

completed, to aide and assist with questions or issues that have arisen during construction, and to determine, in general, if the work observed is being performed in a manner indicating that the work, when fully completed, will be in accordance with the contract documents. This person must have authority to render decisions on the project in order to avoid unnecessary delays.

Delete Section 4.2.4 in its entirety and substitute the following:

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the Contractor. Communications by and with separate Contractors shall be through the Owner on projects where construction management is utilized, all communication shall be through the Construction Manager.

Add the following Section:

4.2.15 The School Building Authority (SBA) of West Virginia reserves the right to visit projects at intervals deemed necessary to observe the progress of construction. The SBA field representative shall have such responsibilities as the SBA may delegate.

ARTICLE 6 – CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS (Only Applicable in Multiple Prime Contractor Situations)

6.1 Owner's Right to Perform Construction and To Award Separate Contracts

Delete Sections 6.1.1. through 6.1.3. in their entirety and add the following Sections:

6.1.1. Multiple Prime Contracts. The Contractor acknowledges that the Owner will contract with other Prime Contractors for other parts of the Project under conditions of the Contract identical or substantially similar to these. The term Contractor in the Contract documents shall in each case mean the Contractor who executes each separate Owner-Contractor Agreement. In preparing its Bid, the Contractor has carefully reviewed those documents made available to it by the Owner or Architect relating to the scheduling and nature of other contracts which may be awarded and has submitted a proposal which takes into account the need to coordinate its Work with that of other Prime Contractors. The Contractor further agrees that time is of the essence in completion of the Work and that the Work will be completed promptly and according to the Project Schedule. It is the express obligation and duty of the Contractor under this Contract to coordinate its Work with the Work of other Prime Contractors to achieve such completion.

6.1.2. Contractor's Duty to Coordinate. The Contractor shall not impede, hinder or delay any other Prime Contractor in the performance of its work. It is the Contractor's duty to communicate with any other Prime Contractor who will be performing work which may connect, compliment, interfere with or otherwise be

dependent upon the Contractor's Work and to resolve any disputes or scheduling or coordination issues with such other Prime Contractor. All Prime Contractors are responsible, jointly and severally, for coordinating their various sections of work as to scheduling, installation procedures, Shop Drawings and installation of related materials. Provided that the Contractor does not thereby assume responsibility for acts or omissions of the other contractors, if required to do so by the Construction Manager, the Contractor shall review the actual progress of other Prime Contractors work on a monthly basis and advise the Owner as to whether the Request for Payment submitted by any other Prime Contractor is in accordance with the actual progress of the corresponding work.

6.1.3. Owner's Coordination Duties. Neither the Owner nor the Architect has any obligation express or implied to coordinate or schedule the Work of Contractor with that of other Prime Contractors.

6.1.4. Third Party-Beneficiary. Each other Prime Contractor has a right to performance of Contractor's obligations under this Article 6. Contractor agrees that such other Prime Contractors are third-party beneficiaries of its obligations under this Article 6 and that Contractor will be a third-party beneficiary of all other Prime Contractors' obligations under the same provisions appearing in their respective Contract Documents.

6.1.5. Contractors' Liability to Each Other. In the event that any other Prime Contractor performing work should hinder, delay or damage the Contractor's Work or should otherwise cause loss (including acceleration costs) or injury to the Contractor, Contractor agrees that it shall look solely to such other Prime Contractor for relief therefore. Neither the Owner nor the Architect shall be responsible for any such hindrance, delay, damage, loss, or injury, and the Contractor will, in no event, attempt to hold the Owner or Architect liable for the costs thereof. The Contractor shall not make: (a) any claim for adjustment of Contract Sum or Contract Time, equitable or otherwise, against the Owner based on any of the foregoing; (b) a claim of any type against the Architect arising from such hindrance, delay, damage, loss or injury. Similarly, the Contractor agrees that it will be legally responsible to any other Prime Contractor performing work related to the Project and will indemnify the Owner and Architect against any claim, suit loss, injury, damage or delay including, but not limited to, acceleration costs incurred as a result of delay, caused, in whole or part, by the Contractor. The Contractor and its Performance Bond surety shall indemnify and hold harmless the Owner, and the Architect from and against any claim brought against any of them by another Prime Contractor including costs, expenses and attorneys' fees incurred by any of them as a result of the Contractors alleged acts or omissions.

6.2 Mutual Responsibility

Delete Section 6.2.3 in its entirety.

ARTICLE 8 – TIME

Add the following Section:

8.4 Acceleration

- .1 If the Contractor is behind the construction schedule to such an extent that the Owner, Architect or Construction Manager reasonably determines that the Contractor will be unable to meet any milestone completion date established by the Contract Documents or to substantially complete the Work in the Contract Time, the Owner may direct the Contractor to accelerate its work. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work to allow contractor to meet future milestone completion dates and achieve substantial completion within the Contract Time. Such acceleration shall be accomplished at the Contractor's own cost. Contractor shall also pay any additional sums which may become due to the Architect as a result of such acceleration. If the Contractor voluntarily accelerates its work to maintain the construction schedule, it shall likewise do so at its own cost. Under Multiple Prime Contracts if the cause of Contractor being behind schedule is another Prime Contractor(s)'s failure to fulfill its obligations under Article 6, Contractor shall make its claim for acceleration costs solely against such Prime Contractor(s) and not against the Owner, Architect or Construction Manager.

ARTICLE 9 – PAYMENTS AND COMPLETION

Add the following to Article 9 Payments and Completion.

9.2 Schedule of Values. *Delete this Section in its' entirety and replace with the following:*

- 9.2.1** Provide a complete, itemized breakdown of the "Schedule of Values" for the work of this Contract. This "Schedule of Values" must be submitted by each prime Contractor prior to the first Application for Payment by the Contractor, and approved by Architect, County and SBA, prior to the first payment. Unless otherwise required, each line item must include its allocable share of the Contractor's overhead and profit. The Prime Contractor is to follow the following guidelines in development of the "Schedule of Values":
 - a) The "Schedule of Value" shall be prepared in such detail and must be supported by such data to substantiate its accuracy as required by Architect, County and SBA.
 - b) The "Schedule of Values" shall be broken down by Specification Section, then Phase, Section and/or Floor, then product, then Material & Labor, as appropriate for the Project, and as required by Architect, County and SBA. See the below example.
 - c) The "Schedule of Values" shall be broken down in such detail where no single activity exceeds \$100,000. In the event a single activity exceeds \$100,000 (i.e. – equipment, pre-assembled unit, etc.) the Contractor must notify the Architect in writing and obtain approval from the Architect, County and SBA.

- d) The “Schedule of Values” shall utilize action words for description of an activity, i.e. install, place, rough-in, etc.
- e) The “Schedule of Values” shall provide a breakdown for labor, material and equipment, as appropriate and as required Architect, County and SBA.

Section 0000 1

Phase/Section/Area/Floor “A”
 Product X
 Material Cost
 Labor Cost
 Product Y
 Material Cost
 Labor Cost
 Phase/Section/Area/Floor “B”
 Product X
 Material Cost
 Labor Cost
 Product Y
 Material Cost
 Labor Cost

Section 0000 2

Phase/Section/Area/Floor “A”
 Product S
 Material Cost
 Labor Cost

Section 0000 3

Etc.

9.2.2 At the Owner’s discretion, and approved in advance in writing, the Contractor may invoice for off-site stored materials. The off-site stored materials must be verified by a representative of the County prior the approval for payment. All off-site stored material for which payment is being sought shall be scheduled for three (3) months prior to installation. Off-site stored materials shall be stored within the State of West Virginia, unless otherwise approved. Also, the Contractors must provide the Owner with a proof of cost (i.e.– sales receipt) and certificate of insurance from an approved insurance carrier for the value of full replacement of materials stored off-site; also naming the County and SBA as additionally insured.

9.3 Applications for Payment. *Add the following:*

9.3.1.3 A 5% retainage will be maintained throughout the construction period. The Owner will pay 95% of the portion of the Contract Sum properly allocable to labor, material and equipment incorporated in the work, and of materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the most current submitted Application for Payment, less the aggregate of previous payments.

Add the following Section:

9.3.4 The School Building Authority (SBA) of West Virginia reserves the right to review all contractors' applications for payment and request additional documentation to substantiate the request and in cooperation with the Owner make adjustments as deemed appropriate.

Add the following Section:

9.3.5 Applications for payments from the SBA must be accompanied by an SBA Exhibit B Requisition Form, SBA 104A and a copy of the invoice and a description of work completed including materials/equipment used for the project. Requisitions must be received by the depository and the SBA by the 5th day of the month in which payment is being requested. Payments will be processed and mailed to the grant recipient on the 15th day of the same month. The SBA reserves the right to review requests for payment and make adjustments when they deem necessary. **Note: An approved construction schedule must be in place prior to the second pay application being requested. All Prime Contractors shall review and provide written approval of construction schedule and each subsequent revision thereof. Failure to comply with this provision will result in delayed processing of this and all future pay applications until the owner and SBA approved schedule is in place.**

9.8.5 Substantial Completion

In the second sentence, change the phrase "make payment of retainage" to read "make partial payment of retainage."

Add the following to the end of Section 9.8.5

The Owner will pay upon Substantial Completion of the Contracted Work, a sum sufficient to increase the total payments to 95% of the Contract Sum, less such amounts as the Architect and the Owner shall determine for all incomplete work, rejected work and unsettled claims as provided in the contract documents. The final 5% retainage shall not be released until the Grant Recipient, Architect/Engineer and the School Building Authority have received satisfactory evidence of the completion of all work required by the contract documents, including all rejected work and the resolution of all unsettled claims.

Add the following Section:

9.10 Final Completion and Final Payment

9.10.2

- .1 A State tax release form will be filed with the West Virginia Department of Tax and Revenue by the local board of education upon receipt of the final payment request from the contractor. Final payment will only be processed after the local board of education has received evidence from the Department of Tax and Revenue indicating appropriate state taxes has been paid on completed construction projects in West Virginia.
- .2 Affidavit of Debt Paid – In accordance with West Virginia Code 5A-3-10a, contractors are required to submit an Affidavit of Debt Paid SBA Form 177. This form shall be submitted to the county board of education or contracting agency along with other closeout documents.
- .3 *Should the Architect determine during the final inspection that the remaining work is not completed in accordance with the terms and conditions of the contract documents, the Contractor shall be responsible for all costs associated with the Architect’s return visits. Costs shall include, but are not limited to, hourly wage, mileage reimbursement, accommodations, and miscellaneous reimbursables.*

Add the following Section:

9.11 Liquidated Damages

9.11.1 It is acknowledged that the Contractor’s failure to achieve substantial completion of the Work within the Contract Time provided by the Contract Documents will cause the Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Owner as against Contractor and its Surety, in the event of delayed completion and without the Owner being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Contractor shall be liable to the owner for payment of liquidated damages in the amount indicated below for each day (Sundays and Holidays included) that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Owner without limiting Owner’s right to terminate this agreement for default as provided elsewhere herein.

Liquidated damages will be assessed as follows:

<u>Project Cost</u>	<u>Liquidated Damage</u>
Up to \$1,000,000	\$750.00/per day
\$1,000,000 to \$5,000,000	\$1,000.00/per day

Over \$5,000,000

\$2,000.00/per day

ARTICLE 11 – INSURANCE AND BONDS

11.3 Property Insurance

Add the following Section:

11.3.11

- .1 The General Contractor for Multiple Prime Contracts is responsible for providing Builder's Risk Insurance meeting the requirements of this Section 11.3 for all Prime Contractors. See Section 11.5.1 for values and named insured. Payment of deductibles shall be the responsibility of the Prime Contractors' prorated by percentage among the claimants based on value of claim. General Contractor shall act as the fiduciary for distribution of insurance proceeds to the insured in the manner described in Section 11.3.8.
- .2 The Single Prime Contractor (Including Site Prep) is responsible for providing Builder's Risk Insurance meeting the requirements of this Section 11.3. See Section 11.5.1 for values and named insured. Payment of deductibles shall be the responsibility of the Contractor. Contractor shall act as the fiduciary for distribution of insurance proceeds to the insured in the manner described in Section 11.3.8.

11.4 Performance Bond and Payment Bond

Add the following Section:

11.4.3

- .1 The contractor to whom any contract is awarded, shall pay for, execute and deliver to the Owner via the Architect, within ten (10) days after award of contract by Owner and before signing the contract a corporate surety Performance and Labor and Material Payment Bond on AIA Document A311 (or equivalent form), to be executed by an A.M. Best, A- or better rated surety company listed on the most current Federal Register, Circular 570, and which is authorized to do business in the State of West Virginia and which is satisfactory to and approved by the Owner and the SBA in the sum of one hundred percent (100%) of the amount of the contract, insuring the full and faithful performance of the work and payment in full for all materials, machinery, equipment and labor, and covering all the guarantees called for in the specifications and all other obligations arising there under. The Labor and Material Payment Bond shall be in the sum of one hundred percent (100%) of the contract amount. All contractors performing work on SBA projects must be covered by a performance bond and must be included on the list of subcontractors submitted to the SBA (Form 123). The Owner will not accept responsibility for direct payments to subcontractors performing work on projects by way of consignment. No Performance Bond is required for projects of \$25,000 or less.

- .2 Should the successful Bidder fail or refuse to deliver the required bond and all other Contract Documents, properly executed within ten (10) days after receipt of the Owner's letter of intent to award a Contract, the successful Bidder shall forfeit the security deposited with his Bid as liquidated damages, not as a penalty.
- .3 Irrevocable Letter of Credit is not acceptable as a Performance Bond.
- .4 A certified cashiers' check is not acceptable as a Performance Bond.
- .5 Personal securities are not acceptable as a Performance Bond.
- .6 Failure of a construction firm to satisfactorily perform the work specified in the contract documents will result in the owner executing their rights, pursuant to the conditions of the contract documents, to declare a construction contract default under the provisions of the AIA General Conditions of the Contract for Construction established for this project. If the construction firm's surety company is notified of their responsibility for the completion or remediation of incomplete or non-compliant work, said firm may no longer be eligible to bid future projects funded by the School Building Authority of West Virginia.

Add the following Section:

11.4.4 Workers Compensation Coverage shall be provided on the project by all Contractors. Proof of continued Workers Compensation coverage throughout the duration of the project shall be provided on the certificate of coverage.

Add the following Section:

11.5 Insurance

11.5.1 In furtherance of Article 11 of General Conditions, each contractor furnishing labor and materials shall provide insurance in the following categories and for the stated minimum amounts. All insurance shall be written to show evidence of the following: The Architect and the Owner shall be **ADDITIONALLY INSURED** on the contractor's policy. The Contractor shall be the **NAMED INSURED**.

Part One - Worker's Compensation

Contractors shall purchase and maintain workers' compensation insurance from a licensed carrier authorized to provide such coverage in the State of West Virginia.

Part Two - Employer's Liability – Limits Required:

\$1,000,000 – bodily injury by accident/each accident

\$1,000,000 – bodily injury by disease/per policy

\$1,000,000 – bodily injury disease/each employee

Coverage must include broad form employer's liability and a waiver of subrogation from workers' compensation carrier.

Contractor's Public Liability Insurance - Limits Required:

- \$2,000,000 – General Aggregate
- \$1,000,000 – Products Complete Operations Aggregate
- \$1,000,000 – Personal & Advertising Injury Limit
- \$1,000,000 – Each Occurrence Limit

Commercial General Liability must include:

Explosion, Collapse and Underground Property Damage. Coverage required if contractor's operations warrant such coverage.

If blasting operations, separate blasting coverage is required.

Contractual Liability Coverage covering claims involving Contractor's contractual liability including Contractor's indemnity obligations set forth in Section 3.18

Automobile Liability Insurance

Limits Required:

- \$1,000,000 – Per Accident
- Provide "Any Auto" Coverage

Excess Liability Insurance

Limits Required:

- \$2,000,000 – Combined Single Limit Occurrence
- \$2,000,000 – Aggregate

Builders Risk and Property Insurance

100% Completed Value Form (refer to Division 1 Section "Allowances" for Multiple Prime Contracts)

Coverage Format:

All Risk including flood, earthquake and theft

Coverage shall include transit and off-site storage/secondary location limit amount that exceeds any shipment or off-site storage material value before payments to contractor for off-site stored materials are approved. Proof of coverage limits exceeding accumulated value of materials stored is required.

Name Insured shall be Owner, Contractor, and all Subcontractors ATIMA.

Single Prime Contractor (Including Site Prep) is responsible for providing Builder's Risk Insurance. Deductibles shall be stated in the Certificate of Insurance. Payment of Deductibles shall be the responsibility of the Contractor.

The General Contractor for Multiple Prime Contracts is responsible for providing Builder's Risk Insurance for all Prime Contractors. Deductibles are to be a maximum of \$2500 per occurrence and shall be stated in the Certificate of Insurance. Payment of deductibles shall be the responsibility of the Prime Contractors' prorated by percentage among the claimants based upon value of claim.

Names Insured shall be, the Contractor and all Subcontractors ATIMA. The Owner, Construction Analyst or Construction Manager and Architect are to be listed as additionally insured.

Deductibles shall be stated in the Certificate of Insurance. Payment of deductible shall be the responsibility of the contractor(s).

The Owner will provide Builders Risk and Property Insurance coverage for renovation projects during construction by adding the contractor and all subcontractors, ATIMA to the permanent property policy unless otherwise stated in the bidding documents.

Certificate of Insurance

The Certificate of Insurance and copy of endorsement of the policy stating that the Owner and Architect are additionally insured shall be provided by the Contractor to the Owner and Architect at the current address of said parties with a transmittal cover indicating the project name, location of project, type of work to be performed and the nature of the documents transmitted.

The Certificate of Insurance shall contain a provision that coverage afforded will not be canceled until at least thirty (30) days prior written notice has been given to the Owner and Architect.

The Owner shall be the Certificate Holder.

The Certificate shall be prepared on "Acord" Form 25-5 (7/90) or an equivalent form.

The Certificate shall indicate that the Owner, Construction Analyst or Construction Manager and Architect are ADDITIONAL INSUREDS under the Contractor's policy.

The Certificate of Insurance shall indicate the carrier's financial rating. The rating must be an A.M. Best, A- or better rated surety company listed on the most current Federal Register, Circular 570 and is authorized to do business in the State of West Virginia and approved by the owner and the SBA.

ARTICLE 15 – CLAIMS AND DISPUTES

15.1.5 Claims for Additional Time

Add the following to Section 15.1.5.2:

15.1.5.2.1 Contractor shall supply climatological data from either an onsite weather station or from a National Oceanic and Atmospheric Administration (NOAA) or other

approved nearby weather reporting station, to substantiate any claim for lost days due to weather. All documentation, including SBA Form 186, shall be submitted to the Architect prior to the 15th day of the month following the proposed claim for review and consideration. Failure to submit these claims monthly basis shall result in forfeiture of the claim.

15.1.5.2.2 Weather delays shall be substantiation for a cost increase claim for site supervision labor and general site operations costs including direct rental costs (i.e. construction trailer, toilet facilities, fencing, dumpsters). Overhead and profit shall not be applied to the rental costs.

15.1.5.2.3 Claims for days lost due to weather delays, on days which have historically been non-work days on the project (i.e. weekends, holidays, and Fridays when four day work weeks are implemented), shall not be granted, unless work has occurred on these days for two consecutive work weeks immediately prior to the days being claimed.

ARTICLE 16 – SPECIAL CONDITIONS

Add the following Article 16 Special Conditions as follows:

16.1 In order to ensure the proper payment of wages and overtime; that payroll taxes and only legal deductions are being deducted from employees' compensation; and compliance with the WV Jobs Act is followed, all contractors and subcontractors shall keep and retain payroll records in accordance with the Fair Labor Standards Act (29 CFR 516) and the West Virginia Minimum Wage & Maximum Hours Standards Act West Virginia Code 21-5C-5. Payroll records shall be kept by the contractor in accordance with West Virginia Wage Payment and Collection Act West Virginia Code 21-5-1 et seq. including the requirements and remedies regarding construction employer's wage bond for wages and benefits and the West Virginia Code 38-2-39 regarding bonding requirement for the construction of public buildings. The SBA requires that a certified payroll be submitted with each contractor's pay-application using the U. S. Department of Labor Form WH-347 or other SBA approved document. Certified payrolls must include names, address and last four digits of the social security numbers of all workers, including those of any subcontractors. Upon request, counties will be required to submit the certified payroll report to the SBA for review.

16.2 For the Owner's records, submit copies of permits, licenses, certifications, inspection reports, releases, notices, receipt for fee payments, correspondence and records established in conjunction with compliance with standards and regulations bearing upon performance of the work.

16.3 Compliance with Codes and Governmental Requirements

- 16.3.2** All work, labor, materials and equipment specified, constructed and installed are to be of first-class quality. To help insure this occurs, all work and equipment designed and specified shall conform to the latest applicable codes and standards including but not limited to the following:
- a. West Virginia State Building Code
 - b. American Society for Testing Materials (ASTM)
 - c. American National Standards Institute (ANSI) to the extent adopted by authorities having jurisdiction at the job site.
 - d. West Virginia State Fire Code
 - e. National Electrical Code (NEC)
 - f. American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)
- 16.3.3** All work must also have the approval of all West Virginia governmental authorities and agencies having jurisdiction over the project including but not limited to the following:
- a. West Virginia State Fire Marshal
 - b. West Virginia Department of Health
 - c. West Virginia Department of Natural Resources
 - d. West Virginia Department of Highways
 - e. West Virginia Department of Education
 - f. West Virginia Division of Labor
 - g. School Building Authority of West Virginia
 - h. West Virginia Division of Environmental Protection

16.4 Payroll Records and Retention

- 16.4.1** All contractors and subcontractors are required to keep and retain payroll records in accordance with the Fair Labor Standards Act (29 CFR 516) and West Virginia Code 21 5C-5. The SBA requires that a certified payroll be submitted with each contractor's pay application using U. S. Department of Labor Form WH-347 (formerly DOL 184). Contractors may provide this information in an alternative format provided all required information on the WH-347 is included on the alternative document. Each certified payroll must include names, addresses and last four digits of the social security numbers of all workers, including those of any subcontractors. Upon request, counties will be required to submit the certified payroll records to the SBA for review.

As required by the FLSA all contractors and subcontractors shall preserve for all payroll records for a minimum of three years. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules and records of additions to or deductions from wages.

- 16.4.2** All contractors and subcontractors must comply with the “West Virginia Jobs Act” requirements found in Chapter 21, Article 1C of the West Virginia Code and all Department of Labor regulations.
- 16.4.3** County school boards and other grant recipients shall require all contractors and service providers to verify the criminal records of their employees before granting access to the construction site. All prime contractors and their subcontractors that will be present on the construction site or other board property shall provide the County Board or other grant recipient (owner) assurances of compliance with pertinent WV Code and SBA Policy by verifying the eligibility of all workers by providing a completed SBA Forms 181 and 182 to the County Board of Education or other grant recipient (owner). These forms shall be submitted along with the contract for construction and the contract will not be fully executed until this provision has been satisfied.
- 16.4.4** The successful low bid prime contractor and all subcontractors performing work on the project shall verify the legal status of all workers and shall comply with the latest West Virginia Code chapter 21 article 1B. All prime contractors and their subcontractors shall provide assurances to the county boards of education or other grant recipients (owner) by submitting a completed SBA Form 181. This document acknowledges the prime contractor has received assurances from subcontractors (SBA Form 182) that they are in compliance with applicable WV Code and SBA Policy. Contractors shall maintain records verifying the legal status of workers and shall, upon request by the Commissioner of Labor, surrender all employee records, including all records relating to the payment of State and Federal taxes, for verification of their legal status. If upon examination of records, the Commissioner determines that a contractor is in violation of the provisions of this code, the Commissioner may enter and order that imposes disciplinary action as provided for in article 21-1B- 1 thru 7 of the West Virginia Code.
- 16.4.5** Provide at Project Close-out the following documentation, but not limited to:
- a. Contractor’s Affidavit of Payment of Debts and Claims (AIA G706)
 - b. Contractor’s Affidavit of Release of Liens (AIA G706A)
 - c. Consent of Surety Company to Final Payment (AIA G707)
 - d. Certificate of Insurance (Acord Form and AIA G715) Covering required/specified products and completed operation
 - e. Certificate of Release from the Department of Tax and Revenue stating all appropriate taxes have been paid
 - f. Verification from the Owner (county superintendent) that all Owner training required by the contract documents has been conducted (SBA 159)
 - g. Fire Marshall’s Certificate of Occupancy
 - h. Affidavit of Debt Paid (SBA 177)
 - i. Prepare quality training videos

16.5 SBA Project Observation

16.5.1 The School Building Authority reserves the right to visit projects at intervals deemed necessary to observe the progress of the construction. The SBA field representative shall have such responsibilities as the SBA may delegate.

16.5.2 The School Building Authority reserves the right to review all Contractors Applications for Payment and request additional documentation to substantiate the request and in cooperation with the owner make adjustments as deemed appropriate.

16.5.3 The responsible contractor shall notify the SBA office two weeks in advance of:

- .1 The Testing, Adjusting & Balancing of the HVAC system.
- .2 The training of the county maintenance and custodial personnel on new building components.
- .3 The scheduled punch list walk-thru of the new or renovated school.

16.5.2 County boards of education, before accepting the HVAC contractor's work, shall receive complete training regarding the operation and maintenance of the mechanical equipment and building controls. Training shall be completed prior to occupying the building. There shall also be a one (1) day follow-up training in six months or during the succeeding heating/cooling season after the facility has been occupied to insure training on both heating and cooling operations of the system. Where specified, the installation contractor shall provide two-year maintenance and operations for HVAC equipment and other components as described in the bidding documents. The State Department of Education's HVAC Technicians shall be notified of the date and location of any and all training sessions in order to assure its ability to fulfill their responsibilities as delineated in WV Code 18-9E-3(F) & (G). At the conclusion of the training, the grant recipient shall submit the verification of HVAC Training Form (SBA Form 159) to the SBA office.