



FACILITIES & OPERATIONS
ARCHITECTURE, ENGINEERING AND CONSTRUCTION
UNIVERSITY OF MICHIGAN

FEBRUARY 2024 REVISIONS TO

DESIGN-BUILDER

TERMS AND CONDITIONS

(FIXED PRICE)

Applies to

3/22 Edition of the D-B FP Terms and Conditions

FEBRUARY 2024 REVISIONS
TO D-B FP Terms and Conditions

TABLE OF CONTENTS *

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE NO.</u>
9.1	INSURANCE AND INDEMNIFICATION; BONDS	1
9.6	PERFORMANCE BOND AND PAYMENT BONDS	1
14	PREVAILING WAGE	2

**FEBRUARY 2024 REVISIONS TO
DESIGN-BUILD FIXED PRICE TERMS AND CONDITIONS**

REVISED: Section 9.1.2 as shown with **addition** highlighted below:

9 INSURANCE AND INDEMNIFICATION; BONDS

9.1.2 Additional Insureds—Other than policies of insurance for worker's compensation and professional liability, each policy will be endorsed to name "The Regents of the University of Michigan, a Michigan Constitutional Corporation, including its board members, officers, employees and agents" as "Additional Insureds" **including both ongoing and completed operations utilizing ISO Forms CG 2010 04 07 and CG 2037 04 07 or their equivalent.**

REVISED: Section 9.6.1(c), 9.6.1(f) and 9.3.1.1 as shown with **additions and deletions** highlighted below:

9.6 PERFORMANCE BOND AND PAYMENT BONDS

9.6.1 Design-Builder will furnish a Performance Bond, and Labor and Material Payment Bond (Bonds) meeting all statutory requirements of the State of Michigan and complying with the following specific requirements:

(c) Bonds will remain in effect until the following conditions have been met: (i) final ~~payment has been made,~~ **completion of the Work (for the Performance Bond),** (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amounts and (iii) until such period that claimants have no statutory right to make a claim;

(f) Every bond under this §9.6 must display the surety's bond number **and will be in the form of an AIA A312 Performance and Payment bond.** ~~A rider including substantially the following provisions will be attached to each bond:~~

~~(1) Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents and the Subcontracts. Any addition, alteration, change, extension of time, or other Modification of the Contract Documents, the Trade Contracts or the Subcontracts, or a forbearance on the part of either the Owner, the Contractor or one or more Subcontractors to one or more of the others, will not release the Surety of its obligations, and notice to the Surety of such matters~~

~~is hereby waived. Capitalized words and terms will have the meanings given them in the Contract Documents.~~

~~(2) Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner or the Contractor.~~

~~9.6.1.1 Design Builder's surety will also agree, in the form of a rider to each bond or via a separate agreement, that before it may seek exoneration, release, or any kind of relief from its obligations under the bond as a result of any default by the Owner or the Design Builder in the performance of any obligations to the Design Builder under the Agreement, the surety will cause written notice of such default (specifying said default in detail) to be given to the Owner and the Design Builder, and both of them will have thirty (30) days from the date of receipt of such notice within which to cure such default or cause it to be cured, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured immediately. Such Notice of Default will be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Owner and the Design Builder.~~

9.6.3 Design-Builder will keep the sureties informed of the progress of the Work, and, ~~without limiting the requirements an effect of §9.6.1(f)~~, where necessary, obtain the sureties' consents to, or waivers of: (i) notice of changes in the Work; (ii) request for reduction or release of retainage; (iii) request for Final Payment; and (iv) any other material required by the surety. Design-Builder will promptly give the Owner copies of all communications with the surety requesting or pertaining to consents or waivers. The Owner may, in the Owner's sole discretion, inform sureties of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under or pursuant to any bond issued in connection with the Work.

ADDED: Article 14 as shown below:

ARTICLE 14 PREVAILING WAGE

14.1 All members of the Construction Team shall comply with the State of Michigan Prevailing Wage Act, Act No. 10, Public Acts of 2023., or any successor act.

14.2 The rates of wages and fringe benefits to be paid to each class of "construction mechanics" (as that term is defined in the Prevailing Wage Act) by the members of the Construction Team shall not be less than the wage and fringe benefit rates prevailing in the locality in which the Work is to be performed, as determined from time to time by the Michigan Occupational Safety and Health Administration Wage & Hour

Division of the Department of Labor and Economic Opportunity (the "commissioner" as that term is defined in the Prevailing Wage Act).

14.3 Design-Builder shall keep posted on the construction site, in a conspicuous place, a copy of all applicable prevailing wage and fringe benefit rates and shall keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic employed in connection with the Work. This record shall be provided to the Owner and also be available for reasonable inspection.

14.4 If Design-Builder is advertising for any bids on the Project, the Owner, before the Design-Builder advertises for the bids, shall have the commissioner determine the prevailing rates of wages and fringe benefits for all classes of construction mechanics called for in any Subcontract. A schedule of these rates shall be made a part of the specifications for the work to be performed and shall be printed on the bidding forms where the work is to be done by a Subcontractor. If a contract is not awarded or construction undertaken within 90 days of the date of the commissioner's determination of prevailing rates of wages and fringe benefits, the commissioner shall make a redetermination before the Subcontract is awarded.

14.5 No member of the Construction Team shall discharge, discipline, retaliate against, or otherwise discriminate against a construction mechanic, or threaten to do any of these things, because the construction mechanic reported or was about to report a violation or suspected violation of this act.

14.6 The construction mechanics are intended third party beneficiaries of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements set forth in this section 14, and any construction mechanic aggrieved by the failure of a contractor or subcontractor to pay prevailing wages or benefits as specified in the contract, or by a violation of section 7 of the Prevailing Wage Act, in addition to any other remedies provided in this act or by law, may bring an action in a court of competent jurisdiction against the contractor or subcontractor for damages or injunctive relief and may be awarded reinstatement or other appropriate relief, and all damages sustained, together with actual costs and attorney fees at trial and on appeal.

14.7 Each month, the members of the Construction Team shall promptly submit to the Owner their monthly certified payroll records. In addition, the members of the Construction Team shall promptly submit to the Owner any other information requested by the Owner to complete a Prevailing Wage Act compliance review.

14.8 The Owner, by written notice to the Design-Builder, and to the surety of the Design-Builder, may terminate the Design-Builder's right to proceed with that part of the Work for which less than the prevailing rates of wages and fringe benefits have been or will be paid, and may proceed to complete to Contract by separate agreement with another

contractor or otherwise, and the original Design-Builder and the Design-Builder's surety shall be liable to the Owner for any excess costs occasioned thereby, including all Owner review costs. Any person, firm or corporation or combination thereof, including the officers of any contracting agent, violating the provisions of the Act is guilty of a misdemeanor.

14.9 In case there is an omission of any trade from the list of wage rates and fringe benefits to be paid to each class of mechanics by the Design-Builder, it shall be understood that the trades omitted shall also be paid not less than the wage and fringe benefit rates prevailing in the locality in which the Work is to be performed.