

LABOUR (PUBLIC CONTRACTS) RULES*

(Section 121)

(G.N.S. 53 of 1951)

[1st July, 1951]

1. These rules may be cited as the Labour (Public Contracts) Rules.

2. In these rules –

“Government” includes such Town Boards or local authorities as the State Secretary[†] may specify[‡];

“public contract” means any contract which fulfils the following conditions-

- (a) that one party to the contract is the Government or has entered into the contract with assistance from the Government by way of grant, loan, subsidy, licence, guarantee or other similar form of assistance.
- (b) that the execution of the contract involves –
 - (i) the expenditure of the Government funds; and
 - (ii) the employment of workers by the other party to the contract;
- (c) that the contract is a contract for –
 - (i) the construction, alteration, repair or demolition of public works; or

* Volume V of the Revised Edition of the Laws of Sabah at page 280.

[†] “State secretary” substituted for “Chief Secretary” by virtue of Article 55 (2) (b) of the Constitution of the State of the State of Sabah.

[‡] See G.N.S. 3/60.

- (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or
 - (iii) the performance or supply of services;
- (d) that the contract is awarded by a duly authorised officer of the Government; and
- (e) that the contract involves the expenditure of Government funds of an amount of not less than \$30,000.

3. There shall be implied in every public contract entered into on or after the commencement of these Rules the terms and conditions set out in the Schedule hereto and it shall be the duty of every contractor who enters into any such contract to observe and comply with such terms and conditions in the execution of such contract.

SCHEDULE

1. The contractor shall, in respect of the workers employed in the execution of a public contract, pay rates of wages and observe hours and conditions of work not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried out by any written law or by collective agreement or other recognised machinery of negotiation or arbitration between employers and trade unions representatives respectively of substantial proportions of the employers and workers engaged in the trade or industry in such district (hereinafter referred to as "established rates and conditions").

2. In the absence of established rates and conditions in the trade or industry in the district, the contractor shall observe established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.

3. In the absence of any established rates and conditions as defined in paragraph 1 and 2 of this Schedule the contractor shall pay rates of wages and observe hours and conditions of work which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the contractor is engaged are similar.

4. Before being allowed to tender for any public contract the contractor shall certify that to the best of his knowledge and belief the wages, hours of work and conditions of

work of all workers employed by him in the trade or industry in which he is offering himself as a contractor are fair and reasonable having regard to the provisions of this Schedule.

5. In the event of any difference or dispute arising as to what wages ought to be paid, or what hours or other working conditions ought to be observed in accordance with the provisions of this Schedule, it shall, if not otherwise disposed of be referred by the Director to an independent tribunal for decision. In arriving at its decision the tribunal, in the absence of any established rates and conditions in the trade or industry concerned as specified in paragraph 1 of this Schedule, shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of work of persons employed in a capacity similar to that of the persons to whom the difference or dispute relates in trades or industries carried on under similar general circumstances.

6. A sub-contractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the part of sub-contractors.

7. Contractors and sub-contractors shall recognise the freedom of their workers to be members of registered trade unions.

8. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of the public contract in respect of the work performed in the execution of such contract unless and until he shall have filed together with his claim for payment a certificate –

- (a) showing the rates of wages and hours of work of the various classes of workers employed in the execution of the public contract;
- (b) whether any wages in respect of the said work remain in arrears; and
- (c) that all the conditions of work of the public contract have been duly complied with.

9. The contractor shall also furnish to the Director such further detailed information and evidence as the Director may deem necessary in order to satisfy him that the conditions of this Schedule have been complied with.

10. In the event of default being made in payment of any money in respect of wages of any worker employed on the public contract and if a claim thereafter is filed in the office of the Director and proof thereof satisfactory to the Director is furnished, the director may failing payment by the contractor arrange for the payment of such claim out of the monies at any time payable under the said contract and the amount so paid shall be deemed payments to the contractor.

11. Any contractor or sub-contractor who is found to be in breach of the conditions of this Schedule shall cease to be awarded contracts for such period as the Director may determine.

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