

CONVENTION (NO. 94) CONCERNING LABOUR CLAUSES IN PUBLIC CONTRACTS

Note: The Convention was concurred In by the Senate, S.R. No. 140, May 21, 1953. The Philippine instrument of ratification was signed by the President, October 28, 1953 and deposited with the Director-General of the ILO, December 29, 1953. The Convention entered into force, September 20, 1952 and with respect to the Philippines, December 29, 1954.

Reference: The Convention is also published in 138 UNTS, p. 207.

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Labour Clauses (Public Contracts) Convention, 1949:

ARTICLE 1

1. This Convention applies to contracts which fulfill the following conditions:

(a) that one at least of the parties to the contract is a public authority;

(b) that the execution of the contract involves—

(i) the expenditure of funds by a public authority; 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;

(ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or

(iii) the performance or supply of services; and

(d) that the contract is awarded by a central authority of a Member of the International Labour Organization for which the Convention is in force.

2. The competent authority shall determine the extent to which the manner in which the Convention shall be applied to contracts awarded by authorities other than central authorities.

3. This Convention applies to work carried out by subcontractors or assignees of contracts; appropriate measures shall be taken by the competent authority to ensure such application.

4. Contracts involving the expenditure of public funds of an amount not exceeding a limit fixed by the competent authority after consultation with the organizations of employers and workers concerned, where such exist, may be exempted from the application of this Convention.

5. The competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, exclude from the application of this Convention persons occupying positions of management or of a technical, professional or scientific character, whose conditions of employment are not regulated by national laws or regulations, collective agreement or arbitration award and who do not ordinarily perform manual work.

ARTICLE 2

1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are 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 on—

(a) by collective agreement or other recognized machinery of negotiation between organizations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or

(b) by arbitration award; or

(c) by national laws or regulations.

2. Where the conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labor which are not less favorable than—

(a) those established by collective agreement or other recognized machinery of negotiation, by arbitration, or by national laws or regulations, for work of the same character in the trade or industry concerned in the nearest appropriate district; or

(b) the general level observed in the trade or industry in which the contractor is engaged by employers whose general circumstances are similar.

3. The terms of the clauses to be included in contracts and any variations thereof shall be determined by the competent authority, in the manner considered most appropriate to the national conditions, after consultation with the organizations of employers and workers concerned, where such exist.

4. Appropriate measures shall be taken by the competent authority, by advertising specifications or otherwise, to ensure that persons tendering for contracts are aware of the terms of the clauses.

ARTICLE 3

Where appropriate provisions relating to the health, safety and welfare of workers engaged in the execution of contracts are not already applicable in virtue of national laws or regulations, collective agreement or arbitration award, the competent authority shall take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers concerned.

ARTICLE 4

The laws, regulations or other instrument giving effect to the provisions of this Convention—

(a) shall—

(i) be brought to the notice of all persons concerned;

(ii) define the persons responsible for compliance therewith; and

(iii) require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work; and

(b) shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of—

(i) adequate records of the time worked by, and the wages paid to, the workers concerned; and

(ii) a system of inspection adequate to ensure effective enforcement.

ARTICLE 5

1. Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labor clauses in public contracts.

2. Appropriate measures shall be taken, by the withholding of payments under the contract or otherwise, for the purpose of enabling the workers concerned to obtain the wages to which they are entitled.

ARTICLE 6

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labor Organization full information concerning the measures by which effect is given to the provisions of this Convention.

ARTICLE 7

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may, after consultation with the organizations of employers and workers concerned, where such exist, exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labor Organization any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto, no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of this Article shall, at intervals not exceeding three years, reconsider in consultation with the organizations of employers and workers concerned, where such exist, the practicability of extending the application of the Convention to areas exempted in virtue of paragraph 1.

4. Each Member having recourse to the provisions of this Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of this Article and any progress which may have been made with a view to the progressive application of the Convention in such areas.

ARTICLE 8

The operation of the provisions of this Convention may be temporarily suspended by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, in cases of force majeure or in the event of emergency endangering the national welfare or safety.

ARTICLE 9

1. This Convention does not apply to contracts entered into before the coming into force of the Convention for the Member concerned.

2. The denunciation of this Convention shall not affect the application thereof in respect of contracts entered into while the Convention was in force.

ARTICLE 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labor Office for registration.

ARTICLE 11

1. This Convention shall be binding only upon those Members of the International Labor Organization whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.