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**Parent topic:** Federal Acquisition Regulation

## **22.000 Scope of part.**

This part-

- (a) Deals with general policies regarding contractor labor relations as they pertain to the *acquisition* process;
- (b) Prescribes *contracting* policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes *contract clauses* with respect to each pertinent labor law.

## **22.001 Definitions.**

*Administrator* or "*Administrator, Wage and Hour Division*," as used in this part, means the—

*Administrator*

Wage and Hour Division

U.S. Department of Labor

Washington, DC 20210

or an authorized representative.

*Agency labor advisor* means an individual responsible for advising *contracting* agency officials on Federal contract labor matters.

*e98* means the Department of Labor's approved electronic application ( <https://www.sam.gov> ), whereby a *contracting officer* submits pertinent information to the Department of Labor and requests a *Service Contract Labor Standards* statute wage determination directly from the Wage and Hour Division.

*Service contract* means any Government contract, or subcontract thereunder, the principal purpose of which is to furnish services in the *United States* through the use of *service employees*, except as exempted by [41 U.S.C. chapter 67](#), *Service Contract Labor Standards*; see [22.1003-3](#) and [22.1003-4](#). See [22.1003-5](#) and 29 CFR 4.130 for a partial list of services covered by the *Service Contract Labor Standards* statute.

*Service employee* means any person engaged in the performance of a *service contract* other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "*service employee*" includes all such persons regardless of any contractual relationship that *may* be alleged to exist between a contractor or subcontractor and such persons.

*Wage Determinations at SAM.gov* means the Government internet website for both *Construction Wage Rate Requirements* statute and *Service Contract Labor Standards* statute wage determinations available at <https://www.sam.gov>.

## **Subpart 22.1 - Basic Labor Policies**

### **22.101 Labor relations.**

#### **22.101-1 General.**

(a) Agencies *shall* maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that *may* adversely affect the Government *acquisition* process and (2) that the Government obtains needed *supplies* and services without delay. All matters regarding labor relations *shall* be handled in accordance with agency procedures.

(b)

(1) Agencies *shall* remain impartial concerning any dispute between labor and *contractor* management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies *should* ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see subpart [22.5](#).

(c) Agencies *should*, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies *should* take other actions concerning labor relations problems to the extent consistent with their *acquisition* responsibilities. For example, agencies *should*-

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency *acquisition* programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute's potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted *acquisition* of *supplies* and services. This *shall* only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The *head of the contracting activity* may designate programs or requirements for which it is necessary that *contractors* be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see [22.103-5\(a\)](#)).

## **22.101-2 Contract pricing and administration.**

(a) *Contractor* labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in *pricing* fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see [31.205-6\(b\)](#).

(b) Labor disputes *may* cause work stoppages that delay the performance of Government contracts. *Contracting officers shall* impress upon *contractors* that each *contractor shall* be held accountable for reasonably avoidable delays. Standard *contract clauses* dealing with default, excusable delays, etc., do not relieve *contractors* or subcontractors from the responsibility for delays that are within the *contractors'* or their subcontractors' control. A delay caused by a strike that the *contractor* or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent *contractor* or subcontractor could have acted to end the strike by actions such as-

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;

(2) Using other available Government procedures; and

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore *may* have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in *pricing* fixed-price contracts. Certain costs *may* increase because of strikes; *e.g.*, guard services and attorney's fees. Other costs incurred during a strike *may* not fluctuate (*e.g.*, "fixed costs" such as rent and *depreciation*), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes *shall* be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of *inspection* at the plant of a Government *contractor shall* be continued without regard to the existence of a labor dispute, strike, or picket line.

### **22.101-3 Reporting labor disputes.**

The office administering the contract *shall* report, in accordance with agency procedures, any potential or actual labor disputes that *may* interfere with performing any contracts under its cognizance. If a contract contains the clause at 52.222-1, Notice to the Government of Labor Disputes, the *contractor* also *must* report any actual or potential dispute that *may* delay contract performance.

### **22.101-4 Removal of items from contractors' facilities affected by work stoppages.**

(a) Items *shall* be removed from *contractors'* facilities affected by work stoppages in accordance with agency procedures. Agency procedures *should* allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the *contractor* and the union representative involved their approval of the *shipment* of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or *may* become involved in the removal of items, the *contract administration office shall* ensure that the necessary coordination is accomplished.

### **22.102 Federal and State labor requirements.**

#### **22.102-1 Policy.**

Agencies *shall* cooperate, and encourage *contractors* to cooperate with Federal and State agencies responsible for enforcing labor requirements such as-

(a) Safety;

(b) Health and sanitation;

(c) Maximum hours and minimum wages;

(d) Equal employment opportunity;

(e) Child and convict labor;

(f) Age discrimination;

(g) Disabled and Vietnam veteran employment;

- (h) Employment of workers with disabilities; and
- (i) Eligibility for employment under *United States* immigration laws.

## **22.102-2 Administration.**

(a) Agencies *shall* cooperate with, and encourage *contractors* to use to the fullest extent practicable, the DOL Employment and Training Administration (DOLETA) at <http://www.doleta.gov>, and its affiliated local offices in meeting *contractors'* labor requirements. These requirements *may* be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the *United States*, Puerto Rico, Guam, and the U.S. Virgin Islands. In addition to providing recruitment assistance to *contractors*, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c)

(1) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's *Wage and Hour Division* is responsible for administration and enforcement of numerous wage and hour statutes including-

(i) [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (*Construction*);

(ii) [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards;

(iii) The Copeland Act ([18 U.S.C. 874](#) and [40 U.S.C. 3145](#));

(iv) [41 U.S.C. chapter 65](#), Contracts for Materials, *Supplies*, Articles, and Equipment Exceeding \$10,000;

(v) [41 U.S.C. chapter 67](#), *Service Contract* Labor Standards.

(2) *Contracting officers* should contact the *Wage and Hour Division's* regional offices when required by the subparts relating to these statutes unless otherwise specified. Addresses for these offices *may* be found at 29 CFR 1, Appendix B.

## **22.103 Overtime.**

### **22.103-1 Definition.**

*Normal workweek*, as used in this subpart, means, generally, a workweek of 40 hours. Outside the *United States* and its *outlying areas*, a workweek longer than 40 hours is considered normal if-

(1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

(2) The hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

### **22.103-2 Policy.**

*Contractors shall* perform all contracts, so far as practicable, without using *overtime*, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved *overtime*, extra-pay shifts, and multishifts *should* be scheduled to achieve these objectives.

### **22.103-3 Procedures.**

(a) *Solicitations* normally *shall* not specify delivery or performance schedules that *may* require *overtime* at Government expense.

(b) In negotiating contracts, *contracting officers should*, consistent with the Government's needs, attempt to-

(1) Ascertain the extent that *offers* are based on the payment of *overtime* and shift premiums; and

(2) Negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see [22.103-5\(b\)](#)) that *overtime* will be required in contract performance, the *contracting officer shall* secure from the *contractor* a request for all *overtime* to be used during the life of the contract, to the extent that the *overtime* can be estimated with reasonable certainty. The *contractor's* request *shall* contain the information required by paragraph (b) of the clause at [52.222-2](#), Payment for *Overtime* Premiums.

### **22.103-4 Approvals.**

(a) The *contracting officer shall* review the *contractor's* request for *overtime*. Approval of the use of *overtime may* be granted by an agency approving official after determining *in writing* that *overtime* is necessary to-

(1) Meet essential delivery or performance schedules;

(2) Make up for delays beyond the control and without the fault or negligence of the *contractor*; or

(3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of *overtime* is required before inclusion of an amount in paragraph (a) of the clause at [52.222-2](#), Payment for *Overtime* Premiums.

(c) *Contracting officer* approval of payment of *overtime* premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(8) of the clause at [52.232-7](#), Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying *overtime* premiums under other types of contracts.

(e) Approvals by the agency approving official (see 22.103-4(a)) *may* be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, *contractor* requests for *overtime* exceeding the amount authorized by paragraph (a) of the clause at 52.222-2, Payment for *Overtime* Premiums, *shall* be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review the request and if it approves, send the request to the *contracting officer*. If the *contracting officer* determines that the requested *overtime should* be approved in whole or in part, the *contracting officer shall* request the approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) *Overtime* premiums at Government expense *should* not be approved when the *contractor* is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of *overtime* is authorized under a contract, the office administering the contract and the auditor *should* periodically review the use of *overtime* to ensure that it is allowable in accordance with the criteria in part 31. Only *overtime* premiums for work in those departments, sections, etc., of the *contractor's* plant that have been individually evaluated and the necessity for *overtime* confirmed *shall* be considered for approval.

(i) Approvals for using *overtime shall* ordinarily be prospective, but, if justified by *emergency* circumstances, approvals *may* be retroactive.

## **22.103-5 Contract clauses.**

(a) The *contracting officer shall* insert the clause at 52.222-1, Notice to the Government of Labor Disputes, in *solicitations* and contracts that involve programs or requirements that have been designated under 22.101-1(e).

(b) The *contracting officer shall* include the clause at 52.222-2, Payment for *Overtime* Premiums, in *solicitations* and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*; unless-

(1) A cost-reimbursement contract for operation of vessels is contemplated; or

(2) A cost-plus- incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a *contractor's* share of at least 10 percent is contemplated.

## **Subpart 22.2 - Convict Labor**

### **22.201 General.**

(a) Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987, and Executive Order 12943, December 13, 1994, states: "The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those

skills. It is also true, however, that care *must* be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services." The Executive order does not prohibit the contractor, in performing the contract, from employing-

- (1) Persons on parole or probation;
- (2) Persons who have been pardoned or who have served their terms;
- (3) Federal prisoners; or
- (4) Nonfederal prisoners authorized to work at paid employment in the community under the laws of a jurisdiction listed in the Executive order if-
  - (i) The worker is paid or is in an approved work training program on a voluntary basis;
  - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (iii) Paid employment will not-
    - (A) Result in the displacement of employed workers;
    - (B) Be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or
    - (C) Impair existing contracts for services;
  - (iv) The rates of pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed; and
  - (v) The Attorney General of the *United States* has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended.
- (b) Department of Justice regulations authorize the Director of the Bureau of Justice Assistance to exercise the power and authority vested in the Attorney General by the Executive order to certify and to revoke the certification of work-release laws or regulations (see 28 CFR 0.94-1(b)).

## **22.202 Contract clause.**

Insert the clause at 52.222-3, Convict Labor, in *solicitations* and contracts above the *micro-purchase threshold*, when the contract will be performed in the *United States*, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless-

- (a) The contract will be subject to 41 U.S.C. chapter 65, (see subpart 22.6), which contains a separate prohibition against the employment of convict labor;
- (b) The *supplies* or services are to be purchased from Federal Prison Industries, Inc. (see subpart 8.6); or
- (c) The *acquisition* involves the purchase, from any State prison, of finished *supplies* that *may* be



secured in the open market or from existing stocks, as distinguished from *supplies* requiring special fabrication.

## **Subpart 22.3 - Contract Work Hours and Safety Standards Act**

### **22.300 Scope of subpart.**

This subpart prescribes policies and procedures for applying the requirements of 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards (the statute) to contracts that *may* require or involve laborers or mechanics. In this subpart, the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

### **22.301 Statutory requirement.**

The statute requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract *shall* be required or permitted to work more than 40 hours in any workweek unless paid for all such *overtime* hours at not less than 1 1/2 times the basic rate of pay.

### **22.302 Liquidated damages and overtime pay.**

(a) When an *overtime* computation discloses underpayments, the responsible contractor or subcontractor *must* pay the affected employee any unpaid wages and pay liquidated damages to the Government. The *contracting officer* *must* assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar *day* on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying *overtime* wages required by the statute. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(b) If the contractor or subcontractor fails or refuses to comply with *overtime* pay requirements of the statute and the funds withheld by *Federal agencies* for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the statute despite the exercise of due care, the *agency head may*-

- (1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;
- (2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less;  
or
- (3) Recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.
- (d) After the *contracting officer* determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

### **22.303 Administration and enforcement.**

The procedures and reports required for *construction* contracts in [subpart 22.4](#) also apply to investigations of alleged violations of the statute on other than *construction* contracts.

### **22.304 Variations, tolerances, and exemptions.**

- (a) The Secretary of Labor, under [40 U.S.C.3706](#), upon the Secretary's initiative or at the request of any *Federal agency*, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the statute (see 29 CFR5.15).
- (b) The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR5.14).

### **22.305 Contract clause.**

Insert the clause at [52.222-4](#), Contract Work Hours and Safety Standards-*Overtime* Compensation, in *solicitations* and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in *solicitations* and contracts-

- (a) Valued at or below \$150,000;
- (b) For *commercial products* and *commercial services*;
- (c) For transportation or the transmission of intelligence;
- (d) To be performed outside the *United States*, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331](#)) (29 CFR5.15);
- (e) ) For work to be done solely in accordance with [41 U.S.C. chapter 65](#), (see [subpart 22.6](#));
- (f) For *supplies* that include incidental services that do not require substantial employment of laborers or mechanics; or
- (g) Exempt under regulations of the Secretary of Labor (29 CFR5.15).

## Subpart 22.4 - Labor Standards for Contracts Involving Construction

### 22.400 Scope of subpart.

This subpart implements the statutes which prescribe labor standards requirements for contracts in excess of \$2,000 for *construction, alteration, or repair*, including painting and decorating, of public buildings and public works. (See definition of "*Construction, alteration, or repair*" in section 22.401.) Labor relations requirements prescribed in other subparts of part 22 may also apply.

### 22.401 Definitions.

As used in this subpart-

*Apprentice* means a person-

(1) Employed 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 (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an *apprentice* in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an *apprentice*.

*Construction, alteration, or repair* means all types of work done by laborers and mechanics employed by the *construction* contractor or *construction* subcontractor on a particular *building or work* at the site thereof, including without limitations-

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, *supplies*, or equipment on the site of the *building or work*;

(4) Transportation of materials and *supplies* between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition of this section, and a facility which is dedicated to the *construction* of the *building or work* and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition of this section; and

(5) Transportation of portions of the *building or work* between a secondary site where a significant portion of the *building or work* is constructed, which is part of the "site of the work" definition in paragraph (1)(ii) of this section, and the physical place or places where the *building or work* will remain (paragraph (1)(i) in the "site of the work" definition of this section).

*Laborers or mechanics*.-

(1) Means-

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) *Apprentices, trainees*, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards statute, watchmen and guards;

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals; and

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

*Public building or public work* means *building or work*, the *construction*, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a *Federal agency* to serve the interest of the general public regardless of whether title thereof is in a *Federal agency*.

*Site of the work.-*

(1) Means

(i) The primary site of the work. The physical place or places where the *construction* called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the *building or work* is constructed, provided that such site is-

(A) Located in the *United States*; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraphs (1)(i) of "the secondary site of the work" as defined in paragraph (1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the

project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time *may* be dedicated exclusively, or nearly so, to the performance of a contract.

*Trainee* means a person registered and receiving on-the-job training in a *construction* occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

*Wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which *may* be reasonably anticipated in providing bonafide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated *in writing* to the laborers and mechanics affected. The fringe benefits enumerated in the *Construction Wage Rate Requirements* statute include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or *insurance* to provide any of the foregoing; unemployment benefits; life *insurance*, disability *insurance*, sickness *insurance*, or accident *insurance*; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

## **22.402 Applicability.**

(a) Contracts for *construction* work.

(1) The requirements of this subpart apply-

(i) Only if the *construction* work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality, and only to *construction* work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the *construction* contract, or if *construction* at that site is anticipated by another contract as provided in [subpart 37.3](#);

(iii) To the manufacture or fabrication of *construction* materials and *components* conducted in connection with the *construction* and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iv) To painting of public buildings or public works, whether performed in connection with the original *construction* or as alteration or repair of an existing structure.

(2) The requirements of this subpart do not apply to-

(i) The manufacturing of *components* or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) Contracts requiring *construction* work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research,

experiment, or development (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving *construction, alteration, or repair* of a *public building or public work*);

(iii) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(iv) Employees who work at contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform *construction* activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or *supplies* to or from the site of the work.

(b) Nonconstruction contracts involving some *construction* work.

(1) The requirements of this subpart apply to *construction* work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if-

(i) The *construction* work is to be performed on a *public building or public work*;

(ii) The contract contains specific requirements for a substantial amount of *construction* work exceeding the monetary threshold for application of the *Construction Wage Rate Requirements* statute (the word "substantial" relates to the type and quantity of *construction* work to be performed and not merely to the total value of *construction* work as compared to the total value of the contract); and

(iii) The *construction* work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The requirements of this subpart do not apply if-

(i) The *construction* work is incidental to the furnishing of *supplies*, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a *public building or public work* that is incidental to furnishing *supplies* or equipment under a supply contract; however, if a substantial and segregable amount of *construction, alteration, or repair* is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The *construction* work is so merged with non- *construction* work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

## **22.403 Statutory, Executive Order, and regulatory requirements.**

### **22.403-1 Construction Wage Rate Requirements statute.**

40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (*Construction*), formerly known as the Davis-Bacon Act, provides that contracts in excess of \$2,000 to which the *United States* or the District of Columbia is a party for *construction, alteration, or repair* (including painting and decorating) of public buildings or public works within the *United States*, shall contain a clause (see

[52.222-6](#)) that no laborer or mechanic employed directly upon the site of the work *shall* receive less than the prevailing wage rates as determined by the Secretary of Labor.

#### **22.403-2 Copeland Act.**

The Copeland (Anti-Kickback) Act ([18 U.S.C.874](#) and [40 U.S.C. 3145](#)) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the *construction* or repair of public buildings or public works, financed in whole or in part by the *United States*, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the *wages* paid each employee during the preceding week. Contracts subject to the Copeland Act *shall* contain a clause (see [52.222-10](#)) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

#### **22.403-3 Contract Work Hours and Safety Standards.**

40 U.S.C. chapter 37, Contract Work Hours and Safety Standards, requires that certain contracts (see [22.305](#)) contain a clause (see [52.222-4](#)) specifying that no laborer or mechanic doing any part of the work contemplated by the contract *shall* be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay (see [22.301](#)).

#### **22.403-4 Executive Orders 13658 and 14026.**

Executive Order (E.O.) 13658 established minimum *wages* for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See [subpart 22.19](#). The clause at [52.222-55](#), *Minimum Wages* for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the [subpart 22.4](#) statutory wage determination amount.

#### **22.403-5 Executive Order 13706.**

Executive Order 13706 establishes paid sick leave for employees of certain Federal contractors. See [subpart 22.21](#) and the clause at [52.222-62](#), Paid Sick Leave under Executive Order 13706.

#### **22.403-6 Department of Labor regulations involving construction.**

(a) Under the statutes and Executive orders referred to in [22.403](#) and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp., p. 1007), the Secretary of Labor has issued regulations in Title 29, Subtitle A, Code of Federal Regulations, prescribing standards and procedures to be observed by the

Department of Labor and the Federal *contracting* agencies. Those standards and procedures applicable to contracts involving *construction* are implemented in this subpart.

(b) The Department of Labor regulations include-

(1) Part 1, relating to *Construction Wage Rate Requirements* statute minimum wage rates;

(2) Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and *inspection* of weekly payroll records;

(3) Part 5, relating to enforcement of the-

(i) *Construction Wage Rate Requirements* statute;

(ii) Contract Work Hours and Safety Standards statute; and

(iii) Copeland (Anti-Kickback) Act;

(4) Part 6, relating to rules of practice for appealing the findings of the *Administrator*, Wage and Hour Division, in enforcement cases under the various labor statutes, and by which Administrative Law Judge hearings are held;

(5) Part 7, relating to rules of practice by which contractors and other interested parties *may* appeal to the Department of Labor Administrative Review Board, decisions issued by the *Administrator*, Wage and Hour Division, or administrative law judges under the various labor statutes;

(6) Part 10, relating to establishing a minimum wage for Federal contractors; and

(7) Part 13, relating to establishing paid sick leave for Federal contractors.

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the *Administrator*, Wage and Hour Division.

## **22.404 Construction Wage Rate Requirements statute wage determinations.**

The Department of Labor is responsible for issuing wage determinations reflecting prevailing *wages*, including fringe benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work including drivers who transport to or from the site materials and equipment used in the course of contract operations. Determinations are issued for different types of *construction*, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of *construction* designated in the determination.

### **22.404-1 Types of wage determinations.**

(a) General wage determinations.

(1) A general wage determination contains prevailing wage rates for the types of *construction* designated in the determination, and is used in contracts performed within a specified geographical



area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the *contracting officer* exercises an *option* to extend the term of the contract (see [22.404-12](#)). These determinations *shall* be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published on the *Wage Determinations at SAM.gov* website. General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the *contracting agency*, whichever occurs first. "Publication" within the meaning of this section *shall* occur on the first date the wage determination is published on the *Wage Determinations at SAM.gov*. Archived Construction Wage Rate Requirements statute general wage determinations that are no longer current *may* be accessed in the "Archived DB WD" database on *Wage Determinations at SAM.gov* website for information purposes only. *Contracting officers may* not use an archived wage determination in a contract action without obtaining prior approval of the Department of Labor. To obtain prior approval, contact the Department of Labor, Wage and Hour Division, using <https://www.sam.gov>, or contact the *procurement agency labor advisor* listed on <https://www.sam.gov>.

(b) *Project wage determinations*. A project wage determination is issued at the specific request of a *contracting agency*. It is used only when no general wage determination applies, and is effective for 180 calendar days from the date of the determination. However, if a determination expires before contract award, it *may* be possible to obtain an extension to the 180-day life of the determination (see [22.404-5\(b\)\(2\)](#)). Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the *contracting officer* exercises an *option* to extend the term of the contract (see [22.404-12](#)).

## **22.404-2 General requirements.**

(a) The *contracting officer must* incorporate only the appropriate wage determinations in *solicitations* and contracts and *must* designate the work to which each determination or part thereof applies. The *contracting officer must* not include project wage determinations in contracts or *options* other than those for which they are issued. When exercising an *option* to extend the term of a contract, the *contracting officer must* select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(b) If the wage determination is a general wage determination or a project wage determination containing more than one rate schedule, the *contracting officer shall* either include only the rate schedules that apply to the particular types of *construction* (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule *shall* be applied. Inclusion by reference is not permitted.

(c) The Wage and Hour Division has issued the following general guidelines for use in selecting the proper schedule(s) of wage rates:

(1) *Building construction* is generally the *construction* of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or *supplies*. It typically includes all *construction* of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(2) *Residential construction* is generally the *construction, alteration, or repair* of single family

houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(3) *Highway construction* is generally the *construction, alteration, or repair* of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" *construction*.

(4) *Heavy construction* includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Such heavy projects *may* sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (*e.g.*, "dredging," "water and sewer line," "dams," "flood control," etc.).

(5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of *construction* involved, guidance *shall* be sought before the opening of bids, or receipt of best and final *offers*, from the *Administrator*, Wage and Hour Division. Further examples are contained in Department of Labor All Agency Memoranda Numbers 130 and 131.

#### **22.404-3 Procedures for requesting wage determinations.**

(a) General wage determinations. If there is a general wage determination on the Wage Determinations at *SAM.gov* website applicable to the project, the agency *may* use it without notifying the Department of Labor. When necessary, a request for a general wage determination *may* be made by submitting [Standard Form \(SF\) 308](#), Request for Determination and Response to Request, to the *Administrator*, Wage and Hour Division, Attention: Branch of *Construction* Contract Wage Determinations, 200 Constitution Avenue, NW, Washington, DC 20210.

(b) Project wage determinations. If a general wage determination is not available on Wage Determinations at *SAM.gov*, a *contracting* agency *shall* submit requests for project wage determinations on [SF 308](#) to the Department of Labor. The requests *shall* include the following information:

(1) The location, including the county (or other civil subdivision) and State in which the proposed project is located.

(2) The name of the project and a sufficiently detailed description of the work to indicate the types of *construction* involved (*e.g.*, building, heavy, highway, residential, or other type).

(3) Any available pertinent wage payment information, unless wage patterns in the area are clearly established.

(4) The estimated cost of each project.

(5) All the classifications of laborers and mechanics likely to be employed.

(c) *Time for submission of requests.*

(1) The time required by the Department of Labor for processing requests for project wage

determinations varies according to the facts and circumstances in each case. An agency *should* expect the processing to take at least 30 days. Accordingly, agencies *should* submit requests for project wage determinations for the primary site of the work to the Department of Labor at least 45 days (60 days if possible) before issuing the *solicitation* or exercising an *option* to extend the term of a contract.

(2) Agencies *should* promptly submit to the Department of Labor an *offeror's* request for a project wage determination for a secondary site of the work.

(d) *Review of wage determinations.* Immediately upon receipt, the *contracting* agency *shall* examine the wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes *should* be advised to submit their requests to the Department of Labor.

#### **22.404-4 Solicitations issued without wage determinations for the primary site of the work.**

(a) If a *solicitation* is issued before the wage determination for the primary site of the work is obtained, a notice *shall* be included in the *solicitation* that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the *solicitation*.

(b) In sealed bidding, bids *may* not be opened until a reasonable time after the wage determination for the primary site of the work has been furnished to all bidders.

(c) In negotiated *acquisitions*, the *contracting officer may* open proposals and conduct negotiations before obtaining the wage determination for the primary site of the work. However, the *contracting officer shall* incorporate the wage determination for the primary site of the work into the *solicitation* before submission of best and final *offers*.

#### **22.404-5 Expiration of project wage determinations.**

(a) The *contracting officer shall* make every effort to ensure that contract award is made before expiration of the project wage determination included in the *solicitation*.

(b) The following procedure applies when *contracting* by sealed bidding:

(1) If a project wage determination for the primary site of the work expires before bid opening, or if it appears before bid opening that a project wage determination *may* expire before award, the *contracting officer shall* request a new determination early enough to ensure its receipt before bid opening. If necessary, the *contracting officer shall* postpone the bid opening date to allow a reasonable time to obtain the determination, amend the *solicitation* to incorporate the new determination, and permit bidders to amend their bids. If the new determination does not change the wage rates and would not warrant amended bids, the *contracting officer shall* amend the *solicitation* to include the number and date of the new determination.

(2) If a project wage determination for the primary site of the work expires after bid opening but before award, the *contracting officer shall* request an extension of the project wage determination expiration date from the *Administrator, Wage and Hour Division*. The request for extension *shall* be supported by a written finding, which *shall* include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to

avoid serious impairment of the conduct of Government business. If necessary, the *contracting officer shall* delay award to permit either receipt of the extension or receipt and processing of a new determination. If the request is granted, the *contracting officer shall* award the contract and modify it to apply the extended expiration date to the already incorporated project wage determination. (See 43.103(b)(1).) If the request is denied, the *Administrator* will proceed to issue a new project wage determination. Upon receipt, the *contracting officer shall* process the new determination as follows:

(i) If the new determination for the primary site of the work changes any wage rates for classifications to be used in the contract, the *contracting officer may* cancel the *solicitation* only in accordance with 14.404-1. Otherwise the *contracting officer shall* award the contract and incorporate the new determination to be effective on the date of contract award. The *contracting officer shall* equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates.

(ii) If the new determination for the primary site of the work does not change any wage rates, the *contracting officer shall* award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)

(c) The following procedure applies when *contracting* by negotiation:

(1) If a project wage determination will or does expire before contract award, the *contracting officer shall* request a new wage determination from the Department of Labor. If necessary, the *contracting officer shall* delay award while the new determination is obtained and processed.

(2) The *contracting officer* need not delay opening and reviewing proposals or discussing them with the *offerors* while a new determination for the primary site of the work is being obtained. The *contracting officer shall* request *offerors* to extend the period for acceptance of any proposal if that period expires or *may* expire before receipt and full processing of the new determination.

(3) If the new determination for the primary site of the work changes any wage rates, the *contracting officer shall* amend the *solicitation* to incorporate the new determination, and furnish the wage rate information to all prospective *offerors* that were sent a *solicitation* if the closing date for receipt of proposals has not yet occurred, or to all *offerors* that have not been eliminated from the competition if the closing date has passed. All *offerors* to whom wage rate information has been furnished *shall* be given reasonable opportunity to amend their proposals.

(4) If the new determination for the primary site of the work does not change any wage rates, the *contracting officer shall* amend the *solicitation* to include the number and date of the new determination and award the contract.

## **22.404-6 Modifications of wage determinations.**

(a) General.

(1) The Department of Labor *may* modify a wage determination to make it current by specifying only the items being changed or by reissuing the entire determination with changes incorporated.

(2) All project wage determination modifications expire on the same *day* as the original determination. The need to include a modification of a project wage determination for the primary

site of the work in a *solicitation* is determined by the time of receipt of the modification by the *contracting* agency. Therefore, the *contracting* agency *must* annotate the modification of the project wage determination with the date and time immediately upon receipt.

(3) The need for inclusion of the modification of a general wage determination for the primary site of the work in a *solicitation* is determined by the date the modified wage determination is published on the Wage Determinations at *SAM.gov*, or by the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the *contracting officer*, which *may* occur later.) During the course of the *solicitation*, the *contracting officer shall* monitor the Wage Determinations at *SAM.gov* website to determine whether the applicable wage determination has been revised. Revisions published on the Wage Determinations at *SAM.gov* website or otherwise communicated to the *contracting officer* within the timeframes prescribed at [22.404-6\(b\)](#) and (c) are applicable and *must* be included in the resulting contract. Monitoring can be accomplished by use of the Wage Determinations at *SAM.gov* website's "Alert Service".

(b) The following applies when *contracting* by sealed bidding:

(1) A written action modifying a wage determination *shall* be effective if:

(i) It is received by the *contracting* agency, or is published on the Wage Determinations at *SAM.gov*, 10 or more calendar days before the date of bid opening; or

(ii) It is received by the *contracting* agency, or is published on the Wage Determinations at *SAM.gov*, less than 10 calendar days before the date of bid opening, unless the *contracting officer* finds that there is not reasonable time available before bid opening to notify the prospective bidders. (If the *contracting officer* finds that there is not reasonable time to notify bidders, a written report of the finding *shall* be placed in the contract file and *shall* be made available to the Department of Labor upon request.)

(2) All written actions modifying wage determinations received by the *contracting* agency after bid opening, or modifications to general wage determinations published on the Wage Determinations at *SAM.gov* after bid opening, *shall* not be effective and *shall* not be included in the *solicitation* (but see paragraph (b)(6) of this subsection).

(3) If an effective modification of the wage determination for the primary site of the work is received by the *contracting officer* before bid opening, the *contracting officer shall* postpone the bid opening, if necessary, to allow a reasonable time to amend the *solicitation* to incorporate the modification and permit bidders to amend their bids. If the modification does not change the wage rates and would not warrant amended bids, the *contracting officer shall* amend the *solicitation* to include the number and date of the modification.

(4) If an effective modification of the wage determination for the primary site of the work is received by the *contracting officer* after bid opening, but before award, the *contracting officer shall* follow the procedures in [22.404-5\(b\)\(2\)\(i\)](#) or (ii).

(5) If an effective modification is received by the *contracting officer* after award, the *contracting officer shall* modify the contract to incorporate the wage modification retroactive to the date of award and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates. If the modification does not change any wage rates and would not warrant contract price adjustment, the *contracting officer shall* modify the contract to include the number and date of the modification.

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination which is published on the Wage Determinations at *SAM.gov* before award, shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An *agency head* may request such an extension from the Administrator. The request must be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The *contracting officer* shall follow the procedures in 22.404-5(b)(2).

(c) The following applies when *contracting* by negotiation:

(1) All written actions modifying wage determinations received by the *contracting* agency before contract award, or modifications to general wage determinations published on the Wage Determinations at *SAM.gov* before award, shall be effective.

(2) If an effective wage modification is received by the *contracting officer* before award, the *contracting officer* shall follow the procedures in 22.404-5(c)(3) or (4).

(3) If an effective wage modification is received by the *contracting officer* after award, the *contracting officer* shall follow the procedures in 22.404-6(b)(5).

(d) The following applies when modifying a contract to exercise an *option* to extend the term of a contract:

(1) A modified wage determination is effective if-

(i) The *contracting* agency receives a written action from the Department of Labor prior to exercise of the *option*, or within 45 days after submission of a wage determination request (22.404-3(c)), whichever is later; or

(ii) The Department of Labor publishes the modification to a general wage determination on the Wage Determinations at *SAM.gov* before exercise of the *option*.

(2) If the *contracting officer* receives an effective modified wage determination either before or after execution of the *contract modification* to exercise the *option*, the *contracting officer* must modify the contract to incorporate the modified wage determination, and any changed wage rates, effective as of the date that the *option* to extend was effective.

#### **22.404-7 Correction of wage determinations containing clerical errors.**

Upon the Department of Labor's own initiative or at the request of the *contracting* agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections will be effective immediately, and will apply to any *solicitation* or active contract. Before contract award, the *contracting officer* must follow the procedures in 22.404-5(b)(1) or (2)(i) or (ii) in sealed bidding, and the procedures in 22.404-5(c)(3) or (4) in negotiations. After contract award, the *contracting officer* must follow the procedures at 22.404-6(b)(5), except that for *contract modifications* to exercise an *option* to extend the term of the contract, the *contracting officer* must follow the procedures at 22.404-6(d)(2).

#### **22.404-8 Notification of improper wage determination before award.**

(a) The following written notifications by the Department of Labor *shall* be effective immediately without regard to 22.404-6 if received by the *contracting officer* prior to award:

(1) A *solicitation* includes the wrong wage determination or the wrong rate schedule; or

(2) A wage determination is withdrawn by the Administrative Review Board.

(b) In sealed bidding, the *contracting officer shall* proceed in accordance with the following:

(1) If the notification of an improper wage determination for the primary site of the work reaches the *contracting officer* before bid opening, the *contracting officer shall* postpone the bid opening date, if necessary, to allow a reasonable time to-

(i) Obtain the appropriate determination if a new wage determination is required;

(ii) Amend the *solicitation* to incorporate the determination (or rate schedule); and

(iii) Permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the *contracting officer shall* amend the *solicitation* to include the number and date of the new determination.

(2) If the notification of an improper wage determination for the primary site of the work reaches the *contracting officer* after bid opening but before award, the *contracting officer shall* delay awarding the contract, if necessary, and if required, obtain the appropriate wage determination. The appropriate wage determination *shall* be processed in accordance with 22.404-5(b)(2)(i) or (ii).

(c) In negotiated *acquisitions*, the *contracting officer shall* delay award, if necessary, and process the notification of an improper wage determination for the primary site of the work in the manner prescribed for a new wage determination at 22.404-5(c)(3).

#### **22.404-9 Award of contract without required wage determination.**

(a) If a contract is awarded without the required wage determination (*i.e.*, incorporating no determination, containing a clearly inapplicable general wage determination, or containing a project determination which is inapplicable because of an inaccurate description of the project or its location), the *contracting officer shall* initiate action to incorporate the required determination in the contract immediately upon discovery of the error. If a required wage determination (valid determination in effect on the date of award) is not available, the *contracting officer shall* expeditiously request a wage determination from the Department of Labor, including a statement explaining the circumstances and giving the date of the contract award.

(b) The *contracting officer shall*-

(1) Modify the contract to incorporate the required wage determination (retroactive to the date of award) and equitably adjust the contract price if appropriate; or

(2) Terminate the contract.

#### **22.404-10 Posting wage determinations and notice.**

The contractor *must* keep a copy of the applicable wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where the workers can easily see it. The *contracting officer shall* furnish to the contractor, Department of Labor Form WH-1321, Notice to Employees Working on Federal and Federally Financed *Construction* Projects, for posting with the wage rates. The name, address, and telephone number of the Government officer responsible for the administration of the contract *shall* be indicated in the poster to inform workers to whom they *may* submit complaints or raise questions concerning labor standards.

#### **22.404-11 Wage determination appeals.**

The Secretary of Labor has established an Administrative Review Board which decides appeals of final decisions made by the Department of Labor concerning *Construction* Wage Rate Requirements statute wage determinations. A *contracting* agency or other interested party *may* file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by the *Administrator* has been sought pursuant to 29 CFR 1.8 and denied.

#### **22.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.**

(a) Each time the *contracting officer* exercises an *option* to extend the term of a contract for *construction*, or a contract that includes substantial and segregable *construction* work, the *contracting officer must* modify the contract to incorporate the most current wage determination.

(b) If a contract with an *option* to extend the term of the contract has indefinite-delivery or indefinite-quantity *construction* requirements, the *contracting officer must* incorporate the wage determination incorporated into the contract at the exercise of the *option* into *task orders* issued during that *option* period. The wage determination will be effective for the complete period of performance of those *task orders* without further revision.

(c) The *contracting officer must* include in fixed-price contracts a clause that specifies one of the following methods, suitable to the interest of the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an *option* to extend the term of the contract:

(1) The *contracting officer may* provide the *offerors* the opportunity to bid or propose separate prices for each *option* period. The *contracting officer must* not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each *option* to extend the term of the contract. Generally, this method is used in *construction*-only contracts (with *options* to extend the term) that are not expected to exceed a total of 3 years.

(2) The *contracting officer may* include in the contract a separately specified *pricing* method that permits an adjustment to the contract price or contract labor unit price at the exercise of each *option* to extend the term of the contract. At the time of *option* exercise, the *contracting officer must* incorporate a new wage determination into the contract, and *must* apply the specific *pricing* method to calculate the contract price adjustment. An example of a contract *pricing* method that the *contracting officer* might separately specify is incorporation in the *solicitation* and resulting contract



of the *pricing* data from an annually published unit *pricing* book (e.g., the U.S. Army Computer-Aided Cost Estimating System or similar *commercial product*), which is multiplied in the contract by a factor proposed by the contractor (e.g., .95 or 1.1). At *option* exercise, the *contracting officer* incorporates the *pricing* data from the latest annual edition of the unit *pricing* book, multiplied by the factor agreed to in the basic contract. The *contracting officer* must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(3) The *contracting officer* may provide for a contract price adjustment based solely on a percentage rate determined by the *contracting officer* using a published economic indicator incorporated into the *solicitation* and resulting contract. At the exercise of each *option* to extend the term of the contract, the *contracting officer* will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the *contract clause* as labor costs subject to the provisions of the *Construction Wage Rate Requirements* statute. The *contracting officer* must insert 50 percent as the estimated portion of the contract price that is labor unless the *contracting officer* determines, prior to issuance of the *solicitation*, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs *must* be the only adjustment made to cover increases in *wages* and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the *option*.

(4) The *contracting officer* may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in *wages* and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the *option* to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the *Service Contract Labor Standards* statute and the *construction* requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the *construction* requirements would be similar.

## **22.405 [Reserved]**

## **22.406 Administration and enforcement.**

### **22.406-1 Policy.**

(a) *General.* *Contracting* agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of *construction* contracts. *Contracting* agencies shall maintain an effective program that shall include-

- (1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;
- (2) Adequate payroll reviews, on-site *inspections*, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;
- (3) Prompt investigation and disposition of complaints; and
- (4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

## **22.406-2 Wages, fringe benefits, and overtime.**

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)

(1) The contractor may satisfy the obligation under the clause at [52.222-6](#), *Construction Wage Rate Requirements*, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with a hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include-

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required *overtime* payments, (i.e., 1 1/2 times the basic hourly rate of pay) the contractor *shall* use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. *Overtime shall* not be computed on a rate lower than the basic hourly rate in the wage determination.

### **22.406-3 Additional classifications.**

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the *contracting officer*, pursuant to the clause at 52.222-6, Construction Wage Rate Requirements, *shall* require that the contractor submit to the *contracting officer*, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the *contracting officer shall* review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the *construction* industry.

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

(c)

(1) If the criteria in paragraph (b) of this subsection are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the *contracting officer* approves, the *contracting officer shall* submit a report (including a copy of SF 1444) of that action to the *Administrator*, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the *contracting officer* do not agree on the proposed additional classification, or if the criteria are not met, the *contracting officer shall* submit a report (including a copy of SF 1444) giving the views of all interested parties and the *contracting officer's* recommendation to the *Administrator*, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)

(1) Within 30 days of receipt of the report, the *Administrator*, Wage and Hour Division, will complete action and so advise the *contracting officer*, or will notify the *contracting officer* that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the *contracting officer shall* forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at [52.222-6](#) and that workers in the affected classification receive no less than the minimum rate indicated from the first *day* on which work under the contract was performed in the classification.

(e) In each *option* to extend the term of the contract, if any laborer or mechanic is to be employed during the *option* in a classification that is not listed (or no longer listed) on the wage determination incorporated in that *option*, the *contracting officer must* require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

#### **22.406-4 Apprentices and trainees.**

(a) The *contracting officer shall* review the contractor's employment and payment records of *apprentices* and *trainees* made available pursuant to the clause at [52.222-8](#), Payrolls and Basic Records, to ensure that the contractor has complied with the clause at [52.222-9](#), *Apprentices and Trainees*.

(b) If a contractor has classified employees as *apprentices*, *trainees*, or helpers without complying with the requirements of the clause at [52.222-9](#), the *contracting officer shall* reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

#### **22.406-5 Subcontracts.**

In accordance with the requirements of the clause at [52.222-11](#), Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed [SF 1413](#), Statement and Acknowledgment, upon award of each subcontract.

#### **22.406-6 Payrolls and statements.**

(a) *Submission*. In accordance with the clause at [52.222-8](#), Payrolls and Basic Records, the contractor *must* submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor *may* use the Department of Labor [FormWH-347](#), Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission*. If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the *contracting officer shall*, from any payment due to the contractor, withhold approval of an amount that the *contracting officer* considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) Examination.

(1) The *contracting officer shall* examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention *should* be given

to-

- (i) The correctness of classifications and rates;
  - (ii) Fringe benefits payments;
  - (iii) Hours worked;
  - (iv) Deductions; and
  - (v) Disproportionate employment ratios of laborers, *apprentices* or *trainees* to journeymen.
- (2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis *shall* be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The *contracting* agency *shall* retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls *shall* not be returned to a contractor or subcontractor for any reason, but copies thereof *may* be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession *must* be carefully protected from any public disclosure which is not required by law, since payroll records *may* contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor *may* have a proprietary interest that the Government *may* be obliged to protect. Questions concerning release of this information *may* involve the Freedom of Information Act (FOIA).

#### **22.406-7 Compliance checking.**

(a) *General.* The *contracting officer* *shall* make checks and investigations on all contracts covered by this subpart as *may* be necessary to ensure compliance with the labor standards requirements of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See [Standard Form 1445](#).)

(2) On-site *inspections* to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of *construction*, to ensure consistency.

(c) *Special compliance checks.* Situations that *may* require special compliance checks include -

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant *shall* be so advised and invited to submit additional information.

## **22.406-8 Investigations.**

Conduct labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor *may* conduct an investigation on its own initiative or *may* request a *contracting* agency to do so.

(a) *Contracting agency responsibilities.* Conduct an investigation when a compliance check indicates that substantial or willful violations *may* have occurred or violations have not been corrected.

(1) The investigation *must*-

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(3) Send a written request to the *Administrator*, Wage and Hour Division, to obtain-

(i) Investigation and enforcement instructions; or

(ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back *wages* and liquidated damages and summaries of back *wages* due, to anyone other than Government contract *administrators*.

(b) *Investigation report.* The *contracting officer* must review the investigation report on receipt and make preliminary findings. The *contracting officer* normally *must* not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself *may* support a finding of noncompliance.

(c) *Contractor Notification.* After completing the review, the *contracting officer* *must*-

(1) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the *contracting officer* permit the contractor to examine the investigation report. Also, the *contracting officer* *must* not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)

(i) The contractor *may* rebut the findings *in writing* within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the *contracting officer* does not receive a timely rebuttal, the *contracting officer must* consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for underpaid *wages* and assess liquidated damages. If the request includes liquidated damages, the request *must* state that the contractor has 60 days to request relief from such assessment.

(d) *Contracting officer's report.* After taking the actions prescribed in paragraphs (b) and (c) of this subsection-

(1) The *contracting officer must* prepare and forward a report of any violations, including findings and supporting evidence, to the *agency head*. Standard Form 1446, Labor Standards Investigation Summary Sheet, is the first page of the report; and

(2) The *agency head must* process the report as follows:

(i) The *contracting officer must* send a detailed enforcement report to the *Administrator, Wage and Hour Division*, within 60 days after completion of the investigation, if-

(A) A contractor or subcontractor underpaid by \$1,000 or more;

(B) The *contracting officer* believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the *Construction Wage Rate Requirements* statute);

(C) The contractor or subcontractor has not made restitution; or

(D) Future compliance has not been assured.

(ii) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (d)(2)(i) of this subsection exist, submit a summary report to the *Administrator, Wage and Hour Division*. The report *must* include-

(A) A summary of any violations;

(B) The amount of restitution paid;

(C) The number of workers who received restitution;

(D) The amount of liquidated damages assessed under the *Contract Work Hours and Safety Standards* statute;

(E) Corrective measures taken; and

(F) Any information that *may* be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in paragraphs (d)(2)(i) or (ii) of this subsection are present, close the

case and retain the report in the appropriate contract file.

(iv) If *substantial evidence* is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001), forward the report (supplemented if necessary) to the Attorney General of the *United States* for prosecution if the facts warrant. Notify the *Administrator, Wage and Hour Division*, when the report is forwarded for the Attorney General's consideration.

(e) *Department of Labor investigations*. The Department of Labor will furnish the *contracting officer* an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose-

(1) Underpayments totaling \$1,000 or more;

(2) Aggravated or willful violations (or, when the *contracting officer* believes that the contractor has disregarded its obligations to employees and subcontractors under the *Construction Wage Rate Requirements statute*); or

(3) Potential assessment of liquidated damages under the *Contract Work Hours and Safety Standards statute*.

(f) *Other investigations*. The Department of Labor will provide a letter summarizing the findings of the investigation to the *contracting officer* for all investigations that are not described in paragraph (e) of this subsection.

#### **22.406-9 Withholding from or suspension of contract payments.**

(a) *Withholding from contract payments*. If the *contracting officer* believes a violation exists (see [22.406-8](#)), or upon request of the Department of Labor, the *contracting officer must* withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the *United States* under the *Contract Work Hours and Safety Standards statute*. (See [22.302](#).)

(1) If the *contracting officer* believes a violation exists or upon request of the Department of Labor, the *contracting officer must* withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either *Construction Wage Rate Requirements statute* or *Contract Work Hours and Safety Standards statute requirements*.

(2) If a subsequent investigation confirms violations, the *contracting officer must* adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the *contracting officer must* not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments*. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the *Construction Wage Rate Requirements statute* and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, *must* suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back *wages*, and to cover any liquidated damages due.



(c) Disposition of contract payments withheld or suspended-

(1) Forwarding wage underpayments to the Secretary of Labor. Upon final administrative determination, if the contractor or subcontractor has not made restitution, the *contracting officer must* follow the Department of Labor guidance published in Wage and Hour Division, All Agency Memorandum (AAM) No. 215, Streamlining *Claims* for Federal Contractor Employees Act. The AAM No. 215 can be obtained at <http://www.dol.gov/whd/govcontracts/dbra.htm>; under Guidance there is a link for All Agencies Memoranda (AAMs).

(2) *Returning of withheld funds to contractor.* When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) Limitation on returning funds. If the Department of Labor requested the withholding or if the findings are disputed (see 22.406-10(e)), the *contracting officer must* not return the funds to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, the *contracting officer must* dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

#### **22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

(a) The areas of possible differences of opinion between *contracting officers* and contractors in *construction* contract labor standards enforcement include-

(1) Misclassification of workers;

(2) Hours of work;

(3) Wage rates and payment;

(4) Payment of *overtime*;

(5) Withholding practices; and

(6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the *contracting* agency. If necessary, these differences *may* be settled with assistance from the Department of Labor.

(c) When requesting the contractor to take corrective action in labor violation cases, the *contracting officer shall* inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are handled under the *contract clause* at 52.222-14, Disputes Concerning Labor Standards, and not under the clause at 52.233-1, Disputes.

(2) The contractor *may* appeal the *contracting officer's* findings or part thereof by furnishing the *contracting officer* a complete statement of the reasons for the disagreement with the findings.

(d) The *contracting officer shall* promptly transmit the *contracting officer's* findings and the contractor's statement to the *Administrator, Wage and Hour Division*.

(e) The *Administrator, Wage and Hour Division*, will respond directly to the contractor or subcontractor, with a copy to the *contracting agency*. The contractor or subcontractor *may* appeal the *Administrator's* findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the Labor Department Administrative Review Board are conducted in accordance with 29 CFR Part 7.

(f) The *Administrator, Wage and Hour Division, may* institute *debarment* proceedings against the contractor or subcontractor if the *Administrator* finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards statute or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the *Construction Wage Rate Requirements* statute, or has committed violations of the *Construction Wage Rate Requirements* statute that constitute a disregard of its obligations to employees or subcontractors under 40 U.S.C. 3144.

#### **22.406-11 Contract terminations.**

If a contract or subcontract is terminated for violation of the labor standards clauses, the *contracting agency shall* submit a report to the *Administrator, Wage and Hour Division*. The report *shall* include-

- (a) The number of the terminated contract;
- (b) The name and address of the terminated contractor or subcontractor;
- (c) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (d) The amount and number of the replacement contract, if any; and
- (e) A description of the work.

#### **22.406-12 Cooperation with the Department of Labor.**

(a) The *contracting agency shall* cooperate with representatives of the Department of Labor in the *inspection* of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the *contracting agency shall* furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a *construction* project, the *contracting officer shall* inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the *Construction Wage Rate Requirements* statute, the Contract Work Hours and Safety Standards statute, or the Copeland (Anti-Kickback) Act.

## **22.406-13 Semiannual enforcement reports.**

A semiannual report on compliance with and enforcement of the *construction* labor standards requirements of the *Construction Wage Rate Requirements* statute and *Contract Work Hours and Safety Standards* statute is required from each *contracting* agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports *shall* only contain information as to the enforcement actions of the *contracting* agency and *shall* be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

## **22.407 Solicitation provision and contract clauses.**

(a) Insert the following clauses in *solicitations* and contracts in excess of \$2,000 for *construction* within the *United States*:

(1) 52.222-6, *Construction Wage Rate Requirements*.

(2) 52.222-7, *Withholding of Funds*.

(3) 52.222-8, *Payrolls and Basic Records*.

(4) 52.222-9, *Apprentices and Trainees*.

(5) 52.222-10, *Compliance with Copeland Act Requirements*.

(6) 52.222-11, *Subcontracts (Labor Standards)*.

(7) 52.222-12, *Contract Termination-Debarment*.

(8) 52.222-13, *Compliance with Construction Wage Rate Requirements and Related Regulations*.

(9) 52.222-14, *Disputes Concerning Labor Standards*.

(10) 52.222-15, *Certification of Eligibility*.

(b) Insert the clause at 52.222-16, *Approval of Wage Rates*, in *solicitations* and contracts in excess of \$2,000 for cost-reimbursement *construction* to be performed within the *United States*, except for contracts with a State or political subdivision thereof.

(c) A contract that is not primarily for *construction* may contain a requirement for some *construction* work to be performed in the *United States*. If under 22.402(b) the requirements of this subpart apply to the *construction* work, insert in such *solicitations* and contracts the applicable *construction* labor standards clauses required in this section and identify the item or items of *construction* work to which the clauses apply.

(d) [Reserved]

(e) Insert the clause at 52.222-30, *Construction Wage Rate Requirements-Price Adjustment (None or Separately Specified Pricing Method)*, in *solicitations* and contracts if the contract is expected to be-

(1) A fixed-price contract subject to the *Construction Wage Rate Requirements* statute that will contain *option* provisions by which the *contracting officer may* extend the term of the contract, and the *contracting officer* determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(1) or (2); or

(2) A cost-reimbursable type contract subject to the *Construction Wage Rate Requirements* statute that will contain *option* provisions by which the *contracting officer may* extend the term of the contract.

(f) Insert the clause at 52.222-31, *Construction Wage Rate Requirements-Price Adjustment (Percentage Method)*, in *solicitations* and contracts if the contract is expected to be a fixed-price contract subject to the *Construction Wage Rate Requirements* statute that will contain *option* provisions by which the *contracting officer may* extend the term of the contract, and the *contracting officer* determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(3).

(g) Insert the clause at 52.222-32, *Construction Wage Rate Requirements-Price Adjustment (Actual Method)*, in *solicitations* and contracts if the contract is expected to be a fixed-price contract subject to the *Construction Wage Rate Requirements* statute that will contain *option* provisions by which the *contracting officer may* extend the term of the contract, and the *contracting officer* determines the most appropriate method to establish contract price is the method at 22.404-12(c)(4).

(h) Insert the provision at 52.222-5, *Construction Wage Rate Requirements-Secondary Site of the Work*, in *solicitations* in excess of \$2,000 for *construction* within the *United States*.

## **Subpart 22.5 - Use of Project Labor Agreements for Federal Construction Projects**

### **22.501 Scope of subpart.**

This subpart prescribes policies and procedures to implement Executive Order 14063, *Use of Project Labor Agreements for Federal Construction Projects*, dated February 4, 2022 (3 CFR, 2023 Comp., pp 335-338).

### **22.502 Definitions.**

As used in this subpart-

*Construction* means *construction*, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

*Labor organization* means a *labor organization* as defined in 29 U.S.C. 152(5) of which building and *construction* employees are members.

*Large-scale construction project* means a Federal *construction* project within the *United States* for which the total estimated cost of the *construction* contract to the Federal Government is \$35 million or more.

*Project labor agreement* means a pre-hire collective bargaining agreement with one or more *labor organizations* that establishes the terms and conditions of employment for a specific *construction* project and is an agreement described in [29 U.S.C. 158\(f\)](#).

## **22.503 Policy.**

(a) Executive Order (E.O.) 14063, *Use of Project Labor Agreements for Federal Construction Projects*, requires agencies to use *project labor agreements* in *large-scale construction projects* to promote economy and efficiency in the administration and completion of *Federal construction* projects.

(b) When awarding a contract in connection with a *large-scale construction project* (see [22.502](#)), agencies *shall* require use of *project labor agreements* for contractors and subcontractors engaged in *construction* on the project, unless an exception at [22.504\(d\)](#) applies.

(c) An agency *may* require the use of a *project labor agreement* on projects where the total cost to the Federal Government is less than that for a *large-scale construction project*, if appropriate.

(1) An agency *may*, if appropriate, require that every contractor and subcontractor engaged in *construction* on the project agree, for that project, to negotiate or become a party to a *project labor agreement* with one or more *labor organizations* if the agency decides that the use of *project labor agreements* will—

(i) Advance the Federal Government's interest in achieving economy and efficiency in *Federal procurement*, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(ii) Be consistent with law.

(2) Agencies *may* consider the following factors in deciding whether the use of a *project labor agreement* is appropriate for a *construction* project where the total cost to the Federal Government is less than that for a *large-scale construction project*:

(i) The project will require multiple *construction* contractors and/or subcontractors employing workers in multiple crafts or trades.

(ii) There is a shortage of skilled labor in the region in which the *construction* project will be sited.

(iii) Completion of the project will require an extended period of time.

(iv) *Project labor agreements* have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(v) A *project labor agreement* will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future *construction* needs.

(vi) Any other factors that the agency decides are appropriate.

(d) For indefinite-delivery indefinite-quantity (IDIQ) contracts the use of a *project labor agreement* *may* be required on an order-by-order basis rather than for the entire contract. For an order at or above \$35 million an agency *shall* require the use of a *project labor agreement* unless an exception

applies. See [22.504\(d\)\(3\)](#) and [22.505\(b\)\(3\)](#).

## **22.504 General requirements for project labor agreements.**

(a) *General.* Project labor agreements established under this subpart shall fully conform to all statutes, regulations, and Executive orders.

(b) *Requirements.* A project labor agreement shall-

(1) Bind all contractors and subcontractors engaged in *construction* on the *construction* project to comply with the *project labor agreement*;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the *project labor agreement*;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Include any additional requirements as the agency deems necessary to satisfy its needs.

(c) *Labor organizations.* An agency may not require contractors or subcontractors to enter into a *project labor agreement* with any particular *labor organization*.

(d) *Exceptions to project labor agreement requirements—*

(1) *Exception.* The *senior procurement executive* may grant an exception from the requirements at [22.503\(b\)](#), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a *project labor agreement* on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal *procurement*. The exception shall be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized *construction* work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a *project labor agreement* would be impracticable.

(ii) *Market research* indicates that requiring a *project labor agreement* on the project would substantially reduce the number of potential *offerors* to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See [10.002\(b\)\(1\)](#) and [36.104](#)). A likely reduction

in the number of potential *offerors* is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a *project labor agreement* on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

(2) *Considerations*. When determining whether the exception in paragraph (d)(1)(ii) of this section applies, *contracting officers shall* consider current market conditions and the extent to which price fluctuations *may* be attributable to factors other than the requirement for a *project labor agreement* ( *e.g.*, costs of labor or materials, supply chain costs). Agencies *may* rely on price analysis conducted on recent competitive proposals for *construction* projects of a similar size and scope.

(3) *Timing of the exception* —

(i) *Contracts other than IDIQ contracts*. The exception *must* be granted for a particular contract by the *solicitation* date.

(ii) *IDIQ contracts*. An exception *shall* be granted prior to the *solicitation* date if the basis for the exception cited would apply to all orders. Otherwise, exceptions *shall* be granted for each order by the time of the notice of the intent to place an order ( *e.g.*, 16.505(b)(1)).

## **22.505 Solicitation provision and contract clause.**

When a *project labor agreement* is used for a *construction* project, the *contracting officer shall*—

(a)

(1) Insert the provision at 52.222-33, Notice of Requirement for *Project Labor Agreement*, in *solicitations* containing the clause 52.222-34, *Project Labor Agreement*.

(2) Use the provision with its *Alternate I* if the agency will require the submission of a *project labor agreement* from only the apparent successful *offeror*, prior to contract award.

(3) Use the provision with its *Alternate II* if an agency allows submission of a *project labor agreement* after contract award except when *Alternate III* is used.

(4) Use the provision with its *Alternate III* when *Alternate II* of 52.222-34 is used.

(b)

(1) Insert the clause at 52.222-34, *Project Labor Agreement*, in *solicitations* and contracts associated with the *construction* project.

(2) Use the clause with its *Alternate I* if an agency allows submission of the *project labor agreement* after contract award except when *Alternate II* is used.

(3) Use the clause with its *Alternate II* in IDIQ contracts when the agency will have *project labor agreements* negotiated on an order-by-order basis and anticipates one or more orders *may* not use a *project labor agreement*.

## **Subpart 22.6 - Contracts for Materials, Supplies, Articles, and Equipment**

### **22.601 [Reserved]**

### **22.602 Statutory requirements.**

Except for the exemptions at [22.604](#), all contracts subject to [41 U.S.C. chapter 65](#), (the statute), and entered into by any executive department, independent establishment, or other agency or instrumentality of the *United States*, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the *United States*) for the manufacture or furnishing of materials, *supplies*, articles, and equipment (referred to in this subpart as *supplies*) in any amount exceeding \$15,000, *shall* include or incorporate by reference the stipulations required by the statute pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

### **22.603 Applicability.**

The requirements in [22.602](#) apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of *supplies* that-

- (a) Will be performed in the *United States*, Puerto Rico, or the U.S. Virgin Islands;
- (b) Exceed or *may* exceed \$15,000; and
- (c) Are not exempt under [22.604](#).

### **22.604 Exemptions.**

#### **22.604-1 Statutory exemptions.**

Contracts for *acquisition* of the following *supplies* are exempt from the statute:

- (a) Any item in those situations where the *contracting officer* is authorized by the express language of a statute to purchase "in the open market" generally (such as *commercial products* and *commercial services*, see [part 12](#)); or where a specific purchase is made under the conditions described in [6.302-2](#) in circumstances where immediate delivery is required by the public exigency.
- (b) Perishables, including dairy, livestock, and nursery *products*.
- (c) Agricultural or farm *products* processed for first sale by the original producers.
- (d) Agricultural commodities or the *products* thereof purchased under contract by the Secretary of Agriculture.



## **22.604-2 Regulatory exemptions.**

(a) Contracts for the following *acquisitions* are fully exempt from the statute (see 41 CFR50-201.603):

(1) Public utility services.

(2) *Supplies* manufactured outside the *United States*, Puerto Rico, and the U.S. Virgin Islands.

(3) Purchases against the account of a defaulting contractor where the stipulations of the statute were not included in the defaulted contract.

(4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b)

(1) Upon the request of the *agency head*, the Secretary of Labor *may* exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act's stipulations; provided, that the request includes a finding by the *agency head* stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards *shall* be transmitted to the-

Assistant Secretary for Occupational Safety and Health U.S. Department of Labor Washington, DC 202 10.

All other requests *shall* be transmitted to the-

*Administrator* of the Wage and Hour Division U.S. Department of Labor Washington, DC 202 10.

## **22.605 Rulings and interpretations of the statute.**

(a) As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the statute (see 41 CFR50-206). The substance of certain rulings and interpretations is as follows:

(1) If a contract for \$15,000 or less is subsequently modified to exceed \$15,000, the contract becomes subject to the statute for work performed after the date of the modification.

(2) If a contract for more than \$15,000 is subsequently modified by mutual agreement to \$15,000 or less, the contract is not subject to the statute for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the statute in contracts in excess of \$15,000 awarded for and on behalf of the Government for *supplies* that are to be used in the *construction* and equipment of Government facilities.

(4) If a contract subject to the statute is awarded to a contractor operating Government-owned

facilities, the stipulations of the statute affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the statute unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$15,000. A determination *shall* be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) [Reserved]

## **22.606 [Reserved]**

## **22.607 [Reserved]**

## **22.608 Procedures.**

(a) *Award*. When a contract subject to the statute is awarded, the *contracting officer*, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, *shall* furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation*. In the event of a violation of a stipulation required under the statute, the *contracting officer shall*, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 29 CFR Part 1, Appendix B), and furnish any information available.

## **22.609 [Reserved]**

## **22.610 Contract clause.**

The *contracting officer shall* insert the clause at [52.222-20](#), Contracts for Materials, *Supplies*, Articles, and Equipment, in *solicitations* and contracts covered by the statute (see [22.603](#), [22.604](#), and [22.605](#)).

## **Subpart 22.7 - [Reserved]**

## **Subpart 22.8 - Equal Employment Opportunity**

### **22.800 Scope of subpart.**

This subpart prescribes policies and procedures pertaining to nondiscrimination in employment by *contractors* and *subcontractors*.

## 22.801 Definitions.

As used in this subpart-

*Affirmative action program* means a *contractor's* program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

*Compliance evaluation* means any one or combination of actions that the Office of Federal Contract Compliance Programs (OFCCP) may take to examine a Federal *contractor's* compliance with one or more of the requirements of *E.O.11246*.

*Contractor* includes the terms "*prime contractor*" and "*subcontractor*."

*Deputy Assistant Secretary* means the *Deputy Assistant Secretary* for Federal Contract Compliance, U.S. Department of Labor, or a designee.

*Equal Opportunity clause* means the clause at 52.222-26, Equal Opportunity, as prescribed in 22.810(e).

*E.O.11246* means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive order amending or superseding this order (see 22.802). This term specifically includes the *Equal Opportunity clause* at 52.222-26, and the rules, regulations, and orders issued pursuant to *E.O.11246* by the Secretary of Labor or a designee.

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Prime contractor* means any person who holds, or has held, a Government contract subject to *E.O.11246*.

*Recruiting and training agency* means any person who refers workers to any *contractor* or provides or supervises apprenticeship or training for employment by any *contractor*.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Site of construction* means the general physical location of any building, highway, or other change or improvement to real property that is undergoing *construction*, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a *contractor* or other participating party meets a demand or performs a function relating to a Government contract or *subcontract*.

*Subcontract* means any agreement or arrangement between a *contractor* and any person (in which the parties do not stand in the relationship of an employer and an employee)-

(1) For the purchase, sale, or use of *personal property* or nonpersonal services that, in whole or in part, are necessary to the performance of any one or more contracts; or

(2) Under which any portion of the *contractor's* obligation under any one or more contracts is performed, undertaken, or assumed.

*Subcontractor* means any person who holds, or has held, a *subcontract* subject to *E.O.11246*. The term "first-tier *subcontractor*" means a *subcontractor* holding a *subcontract* with a *prime contractor*.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

## **22.802 General.**

(a) Executive Order 11246, as amended, sets forth the *Equal Opportunity clause* and requires that all agencies-

(1) Include this clause in all nonexempt contracts and *subcontracts* (see [22.807](#)); and

(2) Act to ensure compliance with the clause and the regulations of the Secretary of Labor-

(i) To promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, *sexual orientation*, *gender identity*, or national origin; and

(ii) To prohibit *contractors* from discharging, or in any other manner discriminating against, any employee or applicant for employment because the employee or applicant inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the *contractor's* legal duty to furnish information.

(b) No contract or modification involving new *acquisition* shall be entered into, and no *subcontract* shall be approved by a *contracting officer*, with a person who has been found *ineligible* by the *Deputy Assistant Secretary* for reasons of noncompliance with the requirements of *E.O.11246*.

(c) No *contracting officer* or *contractor* shall contract for *supplies* or services in a manner so as to avoid applicability of the requirements of *E.O.11246*.

(d) *Contractor* disputes related to compliance with its obligation shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR60-1.1).

## **22.803 Responsibilities.**

(a) The Secretary of Labor is responsible for the-

(1) Administration and enforcement of prescribed parts of *E.O.11246*; and

(2) Adoption of rules and regulations and the issuance of orders necessary to achieve the purposes of *E.O.11246*.

(b) The Secretary of Labor has delegated authority and assigned responsibility to the *Deputy Assistant Secretary* for carrying out the responsibilities assigned to the Secretary by *E.O.11246*, except for the issuance of rules and regulations of a general nature.

(c) The head of each agency is responsible for ensuring that the requirements of this subpart are

carried out within the agency, and for cooperating with and assisting the OFCCP in fulfilling its responsibilities.

(d) In the event the applicability of *E.O.11246* and implementing regulations is questioned, the *contracting officer shall* forward the matter to the *Deputy Assistant Secretary*, through agency channels, for resolution.

## **22.804 Affirmative action programs.**

### **22.804-1 Nonconstruction.**

Except as provided in [22.807](#), each nonconstruction *prime contractor* and each *subcontractor* with 50 or more employees and either a contract or *subcontract* of \$50,000 or more, or Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written *affirmative action program* for each of its establishments. Each *contractor* and *subcontractor shall* develop its written *affirmative action programs* within 120 days from the commencement of its first such Government contract, *subcontract*, or Government bill of lading.

### **22.804-2 Construction.**

(a) *Construction contractors* that hold a nonexempt (see [22.807](#)) Government *construction* contract are required to meet-

(1) The contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects; and

(2) Applicable requirements of 41 CFR60-1 and 60-4.

(b) Each agency *shall* maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered *construction* trades. Information concerning, and additions to, this listing will be provided to the principally affected *contracting officers* in accordance with agency procedures. Any *contracting officer* contemplating a *construction* project in excess of \$10,000 within a geographic area not known to be covered by specific affirmative action goals *shall* request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the *solicitation*.

(c) *Contracting officers shall* give written notice to the OFCCP regional office within 10 working days of award of a *construction* contract subject to these affirmative action requirements. The notification *shall* include the name, address, and telephone number of the *contractor*; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the *contracting officer shall* arrange a conference among *contractor*, *contracting activity*, and compliance personnel to discuss the *contractor's* compliance responsibilities.

## 22.805 Procedures.

(a) Preaward clearances for contracts and *subcontracts* of \$10 million or more (excluding *construction*).

(1) Except as provided in paragraphs (a)(4) and (a)(8) of this section, if the estimated amount of the contract or *subcontract* is \$10 million or more, the *contracting officer shall* request clearance from the appropriate OFCCP regional office before-

(i) Award of any contract, including any indefinite delivery contract or letter contract; or

(ii) Modification of an existing contract for new effort that would constitute a contract award.

(2) Preaward clearance for each proposed contract and for each proposed first-tier *subcontract* of \$10 million or more *shall* be requested by the *contracting officer* directly from the OFCCP regional office(s). Verbal requests *shall* be confirmed by letter or facsimile transmission.

(3) When the contract work is to be performed outside the *United States* with employees recruited within the *United States*, the *contracting officer shall* send the request for a preaward clearance to the OFCCP regional office serving the area where the proposed *contractor's* corporate home or branch office is located in the *United States*, or the corporate location where personnel recruiting is handled, if different from the *contractor's* corporate home or branch office. If the proposed *contractor* has no corporate office or location within the *United States*, the preaward clearance request action *should* be based on the location of the *recruiting and training agency* in the *United States*.

(4) The *contracting officer* does not need to request a preaward clearance if-

(i) The specific proposed *contractor* is listed in OFCCP's National Preaward Registry via the Internet at <https://www.dol.gov/agencies/ofccp/pre-award/registry>;

(ii) The projected award date is within 24 months of the proposed *contractor's* Notice of Compliance completion date in the Registry; and

(iii) The *contracting officer* documents the Registry review in the contract file.

(5) The *contracting officer shall* include the following information in the preaward clearance request:

(i) Name, address, and telephone number of the prospective *contractor* and of any corporate affiliate at which work is to be performed.

(ii) Name, address, and telephone number of each proposed first-tier *subcontractor* with a proposed *subcontract* estimated at \$10 million or more.

(iii) Anticipated date of award.

(iv) Information as to whether the *contractor* and first-tier *subcontractors* have previously held any Government contracts or *subcontracts*.

(v) Place or places of performance of the prime contract and first-tier *subcontracts* estimated at \$10 million or more, if known.

(vi) The estimated dollar amount of the contract and each first-tier *subcontract*, if known.

(6) The *contracting officer shall* allow as much time as feasible before award for the conduct of necessary *compliance evaluation* by OFCCP. As soon as the apparently successful *offeror* can be determined, the *contracting officer shall* process a preaward clearance request in accordance with agency procedures, assuring, if possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 days before the proposed award date.

(7) Within 15 days of the clearance request, OFCCP will inform the awarding agency of its intention to conduct a preaward *compliance evaluation*. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward *compliance evaluation*, clearance *shall* be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward *compliance evaluation*, OFCCP *shall* be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance *shall* be presumed and the awarding agency is authorized to proceed with the award.

(8) If the procedures specified in paragraphs (a)(6) and (a)(7) of this section would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the *offer* or extension thereof, the *contracting officer shall* immediately inform the OFCCP regional office of the expiration date of the *offer* or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, the *contracting officer shall* submit written justification for the award to the *head of the contracting activity*, who, after informing the OFCCP regional office, *may* then approve the award without the preaward clearance. If an award is made under this authority, the *contracting officer shall* immediately request a postaward evaluation from the OFCCP regional office.

(9) If, under the provisions of paragraph (a)(8) of this section, a postaward evaluation determines the *contractor* to be in noncompliance with *E.O.11246*, the *Deputy Assistant Secretary may* authorize the use of the enforcement procedures at [22.809](#) against the noncomplying *contractor*.

(b) *Furnishing posters*. The *contracting officer shall* furnish to the *contractor* appropriate quantities of the poster entitled "Equal Employment Opportunity Is The Law." These *shall* be obtained in accordance with agency procedures.

## **22.806 Inquiries.**

(a) An inquiry from a *contractor* regarding status of its compliance with *E.O.11246*, or rights of appeal to any of the actions in [22.809](#), *shall* be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with *E.O.11246 shall* be referred to the *Deputy Assistant Secretary*.

## **22.807 Exemptions.**

(a) Under the following exemptions, all or part of the requirements of *E.O.11246 may* be excluded from a contract subject to *E.O.11246*:

(1) *National security*. The *agency head* may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security. Upon making such a determination, the agency shall notify the *Deputy Assistant Secretary* in writing within 30 days.

(2) *Specific contracts*. The *Deputy Assistant Secretary* may exempt an agency from requiring the inclusion of one or more of the requirements of *E.O.11246* in any contract if the *Deputy Assistant Secretary* deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the *Deputy Assistant Secretary* finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of *E.O.11246*.

(b) The following exemptions apply even though a contract or *subcontract* contains the *Equal Opportunity clause*:

(1) *Transactions of \$10,000 or less*. The *Equal Opportunity clause* is required to be included in prime contracts and *subcontracts* by 22.802(a). Individual prime contracts or *subcontracts* of \$10,000 or less are exempt from application of the *Equal Opportunity clause*, unless the aggregate value of all prime contracts or *subcontracts* awarded to a *contractor* in any 12-month period exceeds, or can reasonably be expected to exceed, \$10,000. (Note: Government bills of lading, regardless of amount, are not exempt.)

(2) *Work outside the United States*. Contracts are exempt from the requirements of *E.O.11246* for work performed outside the *United States* by employees who were not recruited within the *United States*.

(3) *Contracts with State or local governments*. The requirements of *E.O.11246* in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the contract.

(4) *Work on or near Indian reservations*. It shall not be a violation of *E.O.11246* for a *contractor* to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. *Contractors* extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, *sexual orientation*, *gender identity*, or tribal affiliation, and the use of such preference shall not excuse a *contractor* from complying with *E.O.11246*, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts*. The *Deputy Assistant Secretary* may exempt from the requirements of *E.O.11246* any of a *contractor's* facilities that the *Deputy Assistant Secretary* finds to be in all respects separate and distinct from activities of the *contractor* related to performing the contract, provided, that the *Deputy Assistant Secretary* also finds that the exemption will not interfere with, or impede the effectiveness of, *E.O.11246*.

(6) *Indefinite-quantity contracts*. With respect to indefinite-quantity contracts and *subcontracts*, the *Equal Opportunity clause* applies unless the *contracting officer* has reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The applicability of the *Equal Opportunity clause* shall be determined by the *contracting officer* at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the *Equal Opportunity clause* shall be applied to the contract whenever the amount of a single order



exceeds \$10,000. Once the *Equal Opportunity clause* is determined to be applicable, the contract *shall* continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(7) *Contracts with religious entities.* Pursuant to E.O. 13279, Section 202 of E.O. 11246, *shall* not apply to a Government *contractor* or *subcontractor* that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such *contractors* and *subcontractors* are not exempted or excused from complying with the other requirements contained in the order.

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the *contracting officer shall* submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of *E.O.11246*. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section *shall* be submitted to the *Deputy Assistant Secretary* for approval.

(d) The *Deputy Assistant Secretary may* withdraw the exemption for a specific contract, or group of contracts, if the *Deputy Assistant Secretary* deems that such action is necessary and appropriate to achieve the purposes of *E.O.11246*. Such withdrawal *shall* not apply-

(1) To contracts awarded before the withdrawal; or

(2) To any sealed bid contract (including restricted sealed bidding), unless the withdrawal is made more than 10 days before the bid opening date.

## **22.808 Complaints.**

Complaints received by the *contracting officer* alleging violation of the requirements of *E.O.11246 shall* be referred immediately to the OFCCP regional office. The complainant *shall* be advised *in writing* of the referral. The *contractor* that is the subject of a complaint *shall* not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

## **22.809 Enforcement.**

Upon written notification to the *contracting officer*, the *Deputy Assistant Secretary may* direct one or more of the following actions, as well as administrative sanctions and penalties, be taken against *contractors* found to be in violation of E.O. 11246, the regulations of the Secretary of Labor, or the applicable *contract clauses*:

(a) Publication of the names of the *contractor* or its unions.

(b) Cancellation, termination, or *suspension* of the *contractor's* contracts or portion thereof.

(c) *Debarment* from future Government contracts, or extensions or modifications of existing contracts, until the *contractor* has established and carried out personnel and employment policies in compliance with *E.O.11246* and the regulations of the Secretary of Labor.

(d) Referral by the *Deputy Assistant Secretary* of any matter arising under *E.O.11246* to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the

institution of appropriate civil or criminal proceedings.

## **22.810 Solicitation provisions and contract clauses.**

(a) When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the *contracting officer shall insert-*

(1) The clause at 52.222-21, Prohibition of Segregated Facilities, in the *solicitation* and contract; and

(2) The provision at 52.222-22, Previous Contracts and Compliance Reports, in the *solicitation*.

(b) The *contracting officer shall insert* the provision at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for *Construction*, in *solicitations* for *construction* when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of \$10,000.

(c) The *contracting officer shall insert* the provision at 52.222-24, Preaward On-Site Equal Opportunity *Compliance Evaluation*, in *solicitations* other than those for *construction* when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be \$10 million or more.

(d) The *contracting officer shall insert* the provision at 52.222-25, Affirmative Action Compliance, in *solicitations*, other than those for *construction*, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity.

(e) The *contracting officer shall insert* the clause at 52.222-26, Equal Opportunity, in *solicitations* and contracts (see 22.802) unless the contract is exempt from all of the requirements of *E.O.11246* (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of *E.O.11246*, the *contracting officer shall use* the clause with its *Alternate I*.

(f) The *contracting officer shall insert* the clause at 52.222-27, Affirmative Action Compliance Requirements for *Construction*, in *solicitations* and contracts for *construction* that will include the clause at 52.222-26, Equal Opportunity, when the amount of the contract is expected to be in excess of \$10,000.

(g) The *contracting officer shall insert* the clause at 52.222-29, Notification of Visa Denial, in contracts that will include the clause at 52.222-26, Equal Opportunity, if the *contractor* is required to perform in or on behalf of a foreign country.

## **Subpart 22.9 - Nondiscrimination Because of Age**

### **22.901 Policy.**

Executive Order 11141, February 12, 1964 (29 FR 2477), states that the Government policy is as follows:

(a) Contractors and subcontractors *shall not*, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate

against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, *shall* not specify in *solicitations* or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(c) Agencies will bring this policy to the attention of contractors. The use of *contract clauses* is not required.

## **22.902 Handling complaints.**

Agencies *shall* bring complaints regarding a contractor's compliance with this policy to that contractor's attention (*in writing*, if appropriate), stating the policy, indicating that the contractor's compliance has been questioned, and requesting that the contractor take any appropriate steps that *may* be necessary to comply.

## **Subpart 22.10 - Service Contract Labor Standards**

### **22.1000 Scope of subpart.**

This subpart prescribes policies and procedures implementing the provisions of 41 U.S.C. chapter 67, *Service Contract Labor Standards* (formerly known as the *Service Contract Act* of 1965), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C.201, *etseq.*), and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).

### **22.1001 Definitions.**

As used in this subpart-

*Contractor* includes a subcontractor at any tier whose subcontract is subject to the provisions of the statute.

*Multiple year contracts* means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multi year contracts (see 17.103).

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C.1331, *etseq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession within a foreign country (29 CFR 4.112).

*Wage and Hour Division* means the unit in the Department of Labor to which is assigned functions of the Secretary of Labor under the *Service Contract Labor Standards* statute.

*Wage determination* means a determination of minimum wages or fringe benefits made under 41

U.S.C.6703 or 6707(c) applicable to the employment in a given locality of one or more classes of *service employees*.

## **22.1002 Statutory and Executive order requirements.**

### **22.1002-1 General.**

*Service contracts* over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under 41 U.S.C. 6707(d), *service contracts* may not exceed 5 years.

### **22.1002-2 Wage determinations based on prevailing rates.**

*Contractors* performing on *service contracts* in excess of \$2,500 to which no predecessor *contractor's* collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a *wage determination*, the minimum wage set forth in the Fair Labor Standards Act.

### **22.1002-3 Wage determinations based on collective bargaining agreements.**

(a) Successor *contractors* performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality *must* pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a *wage determination* or the wage and fringe benefit terms of the predecessor *contractor's* collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines-

(1) After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or

(2) That the wages and fringe benefits are not the result of arm's length negotiations.

(b) Paragraphs in this subpart 22.10 which deal with this statutory requirement and the Department of Labor's implementing regulations are 22.1010, concerning notification to *contractors* and bargaining representatives of *procurement* dates; 22.1012-2, explaining when a collective bargaining agreement will not apply due to late receipt by the *contracting officer*; and 22.1013 and 22.1021, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

### **22.1002-4 Application of the Fair Labor Standards Act minimum wage.**

No *contractor* or subcontractor holding a *service contract* for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the

Fair Labor Standards Act ([29 U.S.C. 206](#)).

### **22.1002-5 Executive Orders 13658 and 14026.**

Executive Order (E.O.) 13658 established minimum wages for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See [subpart 22.19](#). The clause at [52.222-55](#), Minimum Wages for *Contractor* Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the [subpart 22.10](#) statutory *wage determination* amount.

### **22.1002-6 Executive Order 13706.**

Executive Order 13706 establishes paid sick leave for employees of certain Federal *contractors*. See [subpart 22.21](#) and the clause at [52.222-62](#), Paid Sick Leave under Executive Order 13706.

## **22.1003 Applicability.**

### **22.1003-1 General.**

This [subpart 22.10](#) applies to all Government contracts, the principal purpose of which is to furnish services in the *United States* through the use of *service employees*, except as exempted in [22.1003-3](#) and [22.1003-4](#) of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by *contracting agencies* is not determinative of coverage.

### **22.1003-2 Geographical coverage of the Act.**

The *Service Contract* Labor Standards statute applies to *service contracts* performed in the *United States* (see [22.1001](#)). The *Service Contract* Labor Standards statute does not apply to contracts performed outside the *United States*.

### **22.1003-3 Statutory exemptions.**

The *Service Contract* Labor Standards statute does not apply to-

- (a) Any contract for *construction*, alteration, or repair of public buildings or public works, including painting and decorating;
- (b) Any work required to be done in accordance with the provisions of [41 U.S.C. chapter 65](#);

(c) Any contract for transporting *freight* or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(d) Any contract for furnishing services by radio, telephone, or cable companies subject to the Communications Act of 1934;

(e) Any contract for public utility services;

(f) Any employment contract providing for direct services to a *Federal agency* by an individual or individuals; or

(g) Any contract for operating postal contract stations for the U.S. Postal Service.

#### **22.1003-4 Administrative limitations, variations, tolerances, and exemptions.**

(a) The Secretary of Labor *may* provide reasonable limitations and *may* make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the *Service Contract* Labor Standards statute other than [41 U.S.C. 6707\(f\)](#). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the *Service Contract* Labor Standards statute to protect prevailing labor standards ([41 U.S.C. 6707\(b\)](#)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the *Service Contract* Labor Standards statute *shall* be submitted *in writing* through *contracting* channels and the *agency labor advisor* to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in [22.1003-3](#) of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the *Service Contract* Labor Standards statute:

(1) Contracts entered into by the *United States* with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any *service employee* to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or *emergency* situations such as illness, or accident.

(3) Contracts for the carriage of *freight* or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(c) *Contracts for maintenance, calibration or repair of certain equipment.-*

(1) *Exemption.* The Secretary of Labor has exempted from the *Service Contract* Labor Standards statute contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (c)(2) of this subsection are met:

(i) Automated data processing equipment and office information/word processing systems.

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Product or Service Code (PSC) 6515, "Medical and Surgical Instruments, Equipment, and *Supplies*;" PSC 6525, "Imaging Equipment and *Supplies*: Medical, Dental, Veterinary;" PSC 6630, "Chemical Analysis Instruments;" and PSC 6655, "Geophysical Instruments," are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) *Conditions*. The exemption at paragraph (c)(1) of this subsection applies if all the following conditions are met for a contract (or a subcontract):

(i) The items of equipment to be serviced under the contract are used regularly for other than Government purposes and are sold or traded by the *contractor* in substantial quantities to the general public in the course of normal business operations.

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)-

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the *contractor*, is either published or otherwise available for *inspection* by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or *contractor*.

(iii) The *contractor* will use the same compensation (wage and fringe benefits) plan for all *service employees* performing work under the contract as the *contractor* uses for these employees and equivalent employees servicing the same equipment of commercial customers.

(iv) The apparent successful *offeror* certifies to the conditions in paragraph (c)(2)(i) through (iii) of this subsection. (See [22.1006\(e\)](#).)

(3) *Affirmative determination and contract award*.

(i) For source selections where the *contracting officer* has established a competitive range, if the *contracting officer* determines that one or more of the conditions in paragraphs [22.1003-4\(c\)\(2\)\(i\)](#) through (iii) of an *offeror's* certification will not be met, the *contracting officer shall* identify the deficiency to the *offeror* before receipt of the final proposal revisions. Unless the *offeror* provides a revised *offer* acknowledging applicability of the Service Contract Labor Standards statute or demonstrating to the satisfaction of the *contracting officer* an ability to meet all required conditions for exemption, the *offer* will not be further considered for award.

(ii) The *contracting officer shall* determine *in writing* the applicability of this exemption to the contract before contract award. If the apparent successful *offeror* will meet all conditions in paragraph (c)(2) of this subsection, the *contracting officer shall* make an affirmative determination

and award the contract without the otherwise applicable *Service Contract* Labor Standards clause(s).

(iii) If the apparent successful *offeror* does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this subsection, the *contracting officer shall* incorporate in the contract the *Service Contract* Act clause (see 22.1006(a)) and, if the contract will exceed \$2,500, the appropriate Department of Labor *wage determination* (see 22.1007).

(4) *Department of Labor determination.*

(i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this subsection has not been met, the exemption *shall* be deemed inapplicable, and the contract *shall* become subject to the *Service Contract* Labor Standards statute, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) *shall* be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (c)(2) of this subsection have not been met with respect to a subcontract, the exemption *shall* be deemed inapplicable. The *contractor may* be responsible for ensuring that the subcontractor complies with the *Service Contract* Labor Standards statute, effective as of the date of the subcontract award.

(d) *Contracts for certain services.-*

(1) *Exemption.* Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the *Service Contract* Labor Standards statute contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(2) of this subsection are met:

(i) Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts or subcontracts to operate a Government motor pool or similar facility).

(ii) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which *must* not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the *Construction Wage Rate Requirements* statute, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

(v) Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard *commercial services* (not including charter services).

(vi) Real estate services, including real property appraisal services, related to housing *Federal agencies* or disposing of real property owned by the Government.

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or military personnel in buying and selling homes (which *shall* not include actual moving



or storage of household goods and related services).

(2) *Conditions*. The exemption for the services in paragraph (d)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i)

(A) Except for services identified in paragraph (d)(1)(iv) of this subsection, the *contractor* will be selected for award based on other factors in addition to price or cost, with the combination of other factors at least as important as price or cost; or

(B) The contract will be awarded on a sole source basis.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the *contractor* (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)-

(A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the *contractor*, is either published or otherwise available for *inspection* by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or *contractor*.

(iv) Each *service employee* who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(v) The *contractor* will use the same compensation (wage and fringe benefits) plan for all *service employees* performing work under the contract as the *contractor* uses for these employees and equivalent employees servicing commercial customers.

(vi) The *contracting officer* (or *contractor* with respect to a subcontract) determines in advance before issuing the *solicitation*, based on the nature of the contract requirements and knowledge of the practices of likely *offerors*, that all or nearly all *offerors* will meet the conditions in paragraph (d)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the *contracting officer* (or *contractor* with respect to a subcontract) *shall* consider the practices of the existing *contractor* in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)

(A) The apparent successful *offeror* certifies that the conditions in paragraphs (d)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the *contracting officer* determines that the same certification

is obtained from substantially all other *offerors* that are-

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306\(c\)](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)).

(3) *Contract award or resolicitation.*

(i) If the apparent successful *offeror* does not certify to the conditions, the *contracting officer shall* insert in the contract the applicable *Service Contract* Labor Standards clause(s) (see [22.1006](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor *wage determination* (see [22.1007](#)).

(ii) The *contracting officer shall* award the contract without the otherwise applicable *Service Contract* Labor Standards clause(s) if-

(A) The apparent successful *offeror* certifies to the conditions in paragraphs (d)(2)(ii) through (v) of this subsection;

(B) The *contracting officer* determines that the same certification is obtained from substantially all other *offerors* that are-

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)); and

(C) The *contracting officer* has no reason to doubt the certification.

(iii) If the conditions in paragraph (d)(3)(ii) of this subsection are not met, then the *contracting officer shall* resolicit, amending the *solicitation* by removing the exemption provision from the *solicitation* as prescribed at [22.1006\(e\)\(3\)](#). The contract will include the applicable *Service Contract* Labor Standards clause(s) as prescribed at [22.1006](#) and, if the contract will exceed \$2,500, the appropriate Department of Labor *wage determination* (see [22.1007](#)).

(4) *Department of Labor determination.*

(i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (d)(2) of this subsection have not been met, the exemption *shall* be deemed inapplicable, and the contract *shall* become subject to the *Service Contract* Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR [4.5\(c\)](#) *shall* be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (d)(2) of this subsection have not been met with respect to a subcontract, the exemption *shall* be deemed inapplicable. The *contractor may* be responsible for ensuring that the subcontractor complies with the *Service Contract* Labor Standards statute, effective as of the date of the subcontract award.

(5) *Exceptions.* The exemption at paragraph (d)(1) of this subsection does not apply to *solicitations* and contracts (subcontracts)-

(i) Awarded under , [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled (see [subpart 8.7](#)).

(ii) For the operation of a Government facility, or part of a Government facility (but *may* be applicable to subcontracts for services); or

(iii) Subject to [41 U.S.C. 6707\(c\)](#) (see [22.1002-3](#)).

### **22.1003-5 Some examples of contracts covered.**

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the *Service Contract* Labor Standards statute (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, housekeeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and *construction* equipment. (But see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#).)

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

### **22.1003-6 Repair distinguished from remanufacturing of equipment.**

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to [41 U.S.C. chapter 65](#), rather than to the Service Contract Labor Standards statute. Remanufacturing *shall* be deemed to be manufacturing when the criteria in either paragraphs (a)(1) or (a)(2) of this section are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual

*component* parts.

- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- (iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- (v) The disassembled *components*, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.
- (vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.
- (vii) Such work is performed in a facility owned or operated by the *contractor*.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down.
- (ii) Outmoded parts are replaced.
- (iii) The item or equipment is rebuilt or reassembled.
- (iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.
- (v) The work is performed in a facility owned or operated by the *contractor*.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs(a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the *Service Contract Labor Standards* statute. Examples of such work include the following:

- (1) Repair of an automobile, truck, or other vehicle, *construction* equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.
- (2) Repair of typewriters and other office equipment (but see [22.1003-4\(c\)\(1\)](#) and (d)(1)(iv)).
- (3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.
- (4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs(b)(1), (b)(2), and (b)(3) of this subsection.
- (5) Reupholstering, reconditioning, repair, and refinishing of furniture.

## **22.1003-7 Questions concerning applicability of the Service Contract Labor Standards statute.**

If the *contracting officer* questions the applicability of the *Service Contract Labor Standards* statute to an *acquisition*, the *contracting officer shall* request the advice of the *agency labor advisor*. Unresolved questions *shall* be submitted in a timely manner to the *Administrator, Wage and Hour Division*, for determination.

## **22.1004 Department of Labor responsibilities and regulations.**

Under the *Service Contract Labor Standards* statute, the Secretary of Labor is authorized and directed to enforce the provisions of the *Service Contract Labor Standards* statute, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as-

- (a) *Service contract* labor standards provisions and procedures (29 CFR Part 4, SubpartA);
- (b) *Wage determination* procedures (29 CFR Part 4, subparts A and B);
- (c) Application of the *Service Contract Labor Standards* statute (rulings and interpretations) (29 CFR Part 4, SubpartC);
- (d) Compensation standards (29 CFR Part 4, SubpartD);
- (e) Enforcement (29 CFR Part 4, SubpartE);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing *service contract* labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR Part 8).

## **22.1005 [Reserved]**

## **22.1006 Solicitation provisions and contract clauses.**

- (a)
  - (1) The *contracting officer shall* insert the clause at [52.222-41](#), *Service Contract Labor Standards*, in *solicitations* and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the *Service Contract Labor Standards* statute and is-
    - (i) Over \$2,500; or
    - (ii) For an indefinite dollar amount and the *contracting officer* does not know in advance that the contract amount will be \$2,500 or less.

(2) The *contracting officer shall* not insert the clause at 52.222-41 (or any of the associated *Service Contract Labor Standards* statute clauses as prescribed in this section for possible use when 52.222-41 applies) in the resultant contract if-

(i) The *solicitation* includes the provision at-

(A) 52.222-48, Exemption from Application of the *Service Contract Labor Standards* statute to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification;

(B) 52.222-52, Exemption from Application of the *Service Contract Labor Standards* statute to Contracts for Certain Services-Certification; or

(C) Either of the comparable certifications is checked as applicable in the provision at 52.204-8(c)(2) or 52.212-3(k); and

(ii) The *contracting officer* has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection 22.1003-4, that the *Service Contract Labor Standards* statute does not apply to the contract. (In such case, insert the clause at 52.222-51, Exemption from Application of the *Service Contract Labor Standards* to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements, or 52.222-53, Exemption from Application of the *Service Contract Labor Standards* to Contracts for Certain Services-Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(b) The *contracting officer shall* insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in *solicitations* and contracts if the contract amount is expected to be over \$2,500 and the *Service Contract Labor Standards* statute is applicable. (See 22.1016.)

(c)

(1) The *contracting officer shall* insert the clause at 52.222-43, Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)*, or another clause which accomplishes the same purpose, in *solicitations* and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour *service contract* containing the clause at 52.222-41, *Service Contract Labor Standards*, and is a multiple year contract or is a contract with *options* to renew which exceeds the *simplified acquisition threshold*. The clause *may* be used in contracts that do not exceed the *simplified acquisition threshold*. The clause at 52.222-43, Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)*, applies to both contracts subject to area prevailing *wage determinations* and contracts subject to the incumbent *contractor's* collective bargaining agreement in effect during this contract's preceding contract period (see 22.1002-2 and 22.1002-3). *Contracting officers shall* ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a *contractor's* increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs(d)(1), (2) and (3)), or 52.222-44 (subparagraphs(b)(1) and (2)). (For example, the prior year *wage determination* required a minimum wage rate of \$4.00 per hour. The *contractor* actually paid \$4.10. The new *wage determination* increases the minimum rate to \$4.50. The *contractor* increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The *contracting officer shall* insert the clause at 52.222-44, Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment*, in *solicitations* and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour *service contract* containing the clause at 52.222-41, *Service Contract Labor Standards*, exceeds the *simplified acquisition threshold*, and is

not a multiple year contract or is not a contract with *options* to renew. The clause *may* be used in contracts that do not exceed the *simplified acquisition threshold*. The clause at 52.222-44, Fair Labor Standards Act and *Service Contract* Labor Standards-Price Adjustment, applies to both contracts subject to area prevailing *wage determinations* and contracts subject to *contractor* collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a *wage determination* in connection with (i) exercise of a contract *option* or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it *must* not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) [Reserved]

(e)

(1) The *contracting officer shall* insert the provision at 52.222-48, Exemption from Application of the *Service Contract* Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification, in *solicitations* that-

(i) Include the clause at 52.222-41, *Service Contract* Labor Standards; and

(ii) The contract *may* be exempt from the *Service Contract* Labor Standards statute in accordance with 22.1003-4(c).

(2) The *contracting officer shall* insert the clause at 52.222-51, Exemption from Application of the *Service Contract* Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements-

(i) In *solicitations* that include the provision at 52.222-48, or the comparable provision is checked as applicable in the clause at 52.204-8(c)(2)(iii) or 52.212-3(k)(1); and

(ii) In resulting contracts in which the *contracting officer* has determined, in accordance with 22.1003-4(c)(3), that the *Service Contract* Labor Standards statute does not apply.

(3)

(i) Except as provided in paragraph (e)(3)(ii) of this section, the *contracting officer shall* insert the provision at 52.222-52, Exemption from Application of the *Service Contract* Labor Standards to Contracts for Certain Services--Certification, in *solicitations* that-

(A) Include the clause at 52.222-41, *Service Contract* Labor Standards, and

(B) The contract *may* be exempt from the *Service Contract* Labor Standards statute in accordance with 22.1003-4(d).

(ii) When resoliciting in accordance with 22.1003-4(d)(3)(iii), amend the *solicitation* by removing the provision at 52.222-52 from the *solicitation*.

(4) The *contracting officer shall* insert the clause at 52.222-53, Exemption from Application of the *Service Contract* Labor Standards to Contracts for Certain Services-Requirements-

(i) In *solicitations* that include the provision at 52.222-52, or the comparable provision is checked as applicable in 52.204-8(c)(2) or 52.212-3(k)(2); and

(ii) In resulting contracts in which the *contracting officer* has determined, in accordance with 22.1003-4(d)(3), that the *Service Contract Labor Standards* statute does not apply.

(f) The *contracting officer shall* insert the clause at 52.222-49, *Service Contract Labor Standards-Place of Performance Unknown*, if using the procedures prescribed in 22.1009-4.

## **22.1007 Requirement to obtain wage determinations.**

The *contracting officer shall* obtain *wage determinations* for the following *service contracts*:

(a) Each new *solicitation* and contract in excess of \$2,500.

(b) Each *contract modification* which brings the contract above \$2,500 and-

(1) Extends the existing contract pursuant to an *option* clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon-

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years-unless otherwise advised by the *Wage and Hour Division*.

## **22.1008 Procedures for obtaining wage determinations.**

### **22.1008-1 Obtaining wage determinations.**

(a) *Contracting officers may* obtain most prevailing *wage determinations* using the *Wage Determinations* at *SAM.gov* website. *Contracting officers may* also use the Department of Labor's *e98* electronic process, located on the *Wage Determinations* at *SAM.gov* website, to request a *wage determination* directly from the Department of Labor. If the *Wage Determinations* at *SAM.gov* database does not contain the applicable prevailing *wage determination* for a contract action, the *contracting officer must* use the *e98* process to request a *wage determination* from the Department of Labor.

(b) In using the *e98* process to obtain prevailing *wage determinations*, *contracting officers shall* provide as complete and accurate information on the *e98* as possible. *Contracting officers shall* ensure that the email address submitted on an *e98* request is accurate.

(c) The *contracting officer must* anticipate the amount of time required to gather the information necessary to obtain a *wage determination*, including sufficient time, if necessary, to contact the Department of Labor to request *wage determinations* that are not available through use of the *Wage Determinations* at *SAM.gov* .



(d) Although the *Wage Determinations* at *SAM.gov* website provides assistance to the *contracting* agency to select the correct *wage determination*, the *contracting* agency remains responsible for the *wage determination* selected. If the *contracting* agency has used the *e98* process, the Department of Labor will respond to the *contracting* agency based on the information provided on the *e98*. The *contracting* agency may rely upon the Department of Labor response as the correct *wage determination* for the contract.

(e) To obtain the applicable *wage determination* for each contract action, the *contracting officer* shall determine the following information concerning the *service employees* expected to be employed by the *contractor* and any subcontractors in performing the contract:

(1) Determine the classes of *service employees* to be utilized in performance of the contract using the *Wage and Hour Division's Service Contract Act Directory of Occupations* (Directory). The Directory can be found on *Wage Determinations* at *SAM.gov* Library Page, and is for sale by the Superintendent of Documents, U.S. Government Publishing Office.

(2) Determine the locality where the services will be performed (see [22.1009](#)).

(3) Determine whether [41 U.S.C. 6707\(c\)](#) applies (see [22.1008-2](#), [22.1010](#) and [22.1002-2](#)).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of [5 U.S.C. 5341](#) and/or 5332 (see [22.1016](#)).

(f) If the *contracting officer* has questions regarding the procedures for obtaining a *wage determination*, or questions regarding the selection of a *wage determination*, the *contracting officer* should request assistance from the *agency labor advisor*.

#### **22.1008-2 Successorship with incumbent contractor collective bargaining agreement.**

(a) Early in the *acquisition* cycle, the *contracting officer* shall determine whether [41 U.S.C. 6707\(c\)](#) affects the new *acquisition*. The *contracting officer* shall determine whether there is a predecessor contract covered by the *Service Contract Labor Standards* statute and, if so, whether the incumbent prime *contractor* or its subcontractors and any of their employees have a collective bargaining agreement.

(b) [41 U.S.C. 6707\(c\)](#) provides that a successor *contractor* must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to *service employees* at least equal to those agreed upon by a predecessor *contractor* under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent *contractor* whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime *contractor* or subcontractor is furnishing such services through the use of *service employees* whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of [41 U.S.C. 6707\(c\)](#) is subject to the following limitations:

(1) 41 U.S.C. 6707(c) will not apply if the incumbent *contractor* enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent *contractor* enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement *shall* not be effective for the purposes of 41 U.S.C. 6707(c) under the following conditions:

(i)

(A) In sealed bidding, the *contracting* agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see 22.1012-2(a)); or

(B) For contractual actions other than sealed bidding, the *contracting* agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see 22.1012-2(b)); and

(ii) The *contracting officer* has given both the incumbent *contractor* and its employees' collective bargaining agent timely written notification of the applicable *acquisition* dates (see 22.1010).

(d)

(1) If 41 U.S.C. 6707(c) applies, the *contracting officer shall* obtain a copy of any collective bargaining agreement between an incumbent *contractor* or subcontractor and its employees. Obtaining a copy of an incumbent *contractor's* collective bargaining agreement *may* involve coordination with the administrative *contracting officer* responsible for administering the predecessor contract. (Paragraph (m) of the clause at 52.222-41, *Service Contract Labor Standards*, requires the incumbent prime *contractor* to furnish the *contracting officer* a copy of each collective bargaining agreement.)

(2) If the *contracting officer* has timely received the collective bargaining agreement, the *contracting officer may* use the *Wage Determinations* at *SAM.gov* website to prepare a *wage determination* referencing the agreement and incorporate that *wage determination*, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the *Wage Determinations* at *SAM.gov* process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The *contracting officer may* also use the *e98* process on *Wage Determinations* at *SAM.gov* to request that the Department of Labor prepare the cover *wage determination*. The Department of Labor's response to the *e98 may* include a request for the *contracting officer* to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the *Service Contract Labor Standards* statute to a collective bargaining agreement *should* be directed to the *agency labor advisor*.

(e)

(1) 41 U.S.C. 6707(c) will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor *contractor's* collective bargaining agreement are

substantially at variance with those which prevail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor *contractor's* collective bargaining agreement are not the result of arm's length negotiations (see [22.1013](#) and [22.1021](#)). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a *contractor's* obligations by means such as requiring issuance of a *wage determination* by the DOL, requiring inclusion of the *wage determination* in the contract, or requiring the Government to adequately reimburse the *contractor*, generally reflect a lack of arm's length negotiations.

(2) If the *contracting officer's* review (see [22.1013](#)) indicates that monetary provisions of the collective bargaining agreement *may* be substantially at variance or *may* not have been reached as a result of arm's length bargaining, the *contracting officer shall* immediately contact the *agency labor advisor* to consider if further action is warranted.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the *contracting officer shall* identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all *service employees* under the contract, the *contracting officer shall* access *Wage Determinations* at *SAM.gov* to obtain the prevailing *wage determination* for those *service employee* classifications that are not covered by the collective bargaining agreement. The *contracting officer shall* separately list in the *solicitation* and contract the *service employee* classifications-

(1) Subject to the collective bargaining agreement; and

(2) Not subject to any collective bargaining agreement.

## **22.1009 Place of performance unknown.**

### **22.1009-1 General.**

If the place of performance is unknown, the *contracting officer may* use the procedures in this section. The *contracting officer should* first attempt to identify the specific places or geographical areas where the services might be performed (see [22.1009-2](#)) and then *may* follow the procedures either in [22.1009-3](#) or in [22.1009-4](#).

### **22.1009-2 Attempt to identify possible places of performance.**

The *contracting officer should* attempt to identify the specific places or geographical areas where the services might be performed. The following *may* indicate possible places of performance:

(a) Locations of previous *contractors* and their competitors.

(b) Databases available via the Internet for lists of prospective *offerors* and *contractors*.

(c) Responses to a presolicitation notice (see [5.204](#)).

### **22.1009-3 All possible places of performance identified.**

(a) If the *contracting officer* can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful *offeror* is chosen), the *contracting officer shall* obtain a *wage determination* for each locality where services may be performed (see 22.1008).

(b) If the *contracting officer* subsequently learns of any potential *offerors* in previously unidentified places before the closing date for submission of *offers*, the *contracting officer shall*-

(1) Obtain *wage determinations* for the additional places of performance and amend the *solicitation* to include all *wage determinations*. If necessary, the *contracting officer shall* extend the time for submission of final *offers*; and

(2) Follow the procedures in 22.1009-4.

### **22.1009-4 All possible places of performance not identified.**

If the *contracting officer* believes that there may be *offerors* interested in performing in unidentified places or areas, the *contracting officer may* use the following procedures:

(a) Include the following information in the synopsis and *solicitation*:

(1) That the place of performance is unknown.

(2) The possible places or areas of performance that the *contracting officer* has already identified.

(3) That the *contracting officer* will obtain *wage determinations* for additional possible places of performance if asked to do so *in writing*.

(4) The time and date by which *offerors must* notify the *contracting officer* of additional places of performance.

(b) Include the information required by paragraphs (a)(2) and (a)(4) of this section in the clause at 52.222-49, *Service Contract Labor Standards-Place of Performance Unknown* (see 22.1006(f)). The closing date for receipt of *offerors'* requests for *wage determinations* for additional possible places of performance *should* allow reasonable time for potential *offerors* to review the *solicitation* and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the *solicitation may* be considered a reasonable period of time.

(c) The procedures in 14.304 *shall* apply to late receipt of *offerors'* requests for *wage determinations* for additional places of performance. However, late receipt of an *offeror's* request for a *wage determination* for additional places of performance does not preclude the *offeror's* competing for the proposed *acquisition*.

(d) If the *contracting officer* receives any timely requests for *wage determinations* for additional places of performance the *contracting officer shall*-

(1) Obtain *wage determinations* for the additional places of performance; and

(2) Amend the *solicitation* to include all *wage determinations* and, if necessary, extend the time for

submission of final *offers*.

(e) If the successful *offeror* did not make a timely request for a *wage determination* and will perform in a place of performance for which the *contracting officer* therefore did not request a *wage determination*, the *contracting officer shall*-

(1) Award the contract;

(2) Obtain a *wage determination*; and

(3) Incorporate the *wage determination* in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222-49, *Service Contract Labor Standards-Place of Performance Unknown*.

## **22.1010 Notification to interested parties under collective bargaining agreements.**

(a) The *contracting officer should* determine whether the incumbent prime *contractor's* or its subcontractors' *service employees* performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the *contracting officer shall* give both the incumbent *contractor* and its employees' collective bargaining agent written notification of-

(1) The forthcoming successor contract and the applicable *acquisition* dates (issuance of *solicitation*, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case *may be*); or

(2) The forthcoming *contract modification* and applicable *acquisition* dates (exercise of *option*, extension of contract, change in scope, or start of performance, as the case *may be*); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case *may be*).

(b) This written notification *must* be given at least 30 days in advance of the earliest applicable *acquisition* date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs 22.1012-2(a) and (b) to apply. The *contracting officer shall* retain a copy of the notification in the contract file.

## **22.1011 [Reserved]**

## **22.1012 Applicability of revisions to wage determinations.**

### **22.1012-1 Prevailing wage determinations.**

(a)

(1) The Wage and Hour *Administrator may* issue revisions to prevailing *wage determinations*

periodically. The need for inclusion of a revised prevailing *wage determination* in a *solicitation*, contract or *contract modification* (see [22.1007](#)) is determined by the date of receipt of the revised prevailing *wage determination* by the *contracting agency*. (Note the distinction between receipt by the agency and receipt by the *contracting officer* which *may* occur later.)

(i) For purposes of using *Wage Determinations* at *SAM.gov*, the time of receipt by the *contracting agency* shall be the first *day* of publication of the revised prevailing *wage determination* on the website.

(ii) For purposes of using the *e98* process, the time of receipt by the *contracting agency* shall be the date the agency receives actual notice of a new or revised prevailing *wage determination* from the Department of Labor as an *e98* response.

(2) In selecting a prevailing *wage determination* from the *Wage Determinations* at *SAM.gov* website for use in a *solicitation* or other contract action, the *contracting officer* shall monitor the *Wage Determinations* at *SAM.gov* website to determine whether the applicable *wage determination* has been revised. Revisions published on the *Wage Determinations* at *SAM.gov* website or otherwise communicated to the *contracting officer* within the timeframes prescribed at [22.1012-1\(b\)](#) and (c) are effective and *must* be included in the resulting contract. Monitoring can be accomplished by use of the *Wage Determinations* at *SAM.gov* website's "Alert Service".

(b) The following shall apply when *contracting* by sealed bidding: a revised prevailing *wage determination* shall not be effective if it is received by the *contracting agency* less than 10 days before the opening of bids, and the *contracting officer* finds that there is not reasonable time to incorporate the revision in the *solicitation*.

(c) For contractual actions other than sealed bidding, a revised prevailing *wage determination* received by the *contracting agency* after award of a new contract or a modification as specified in [22.1007\(b\)](#) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the *contracting agency* not less than 10 days before commencement of the work shall be effective.

(d) If the *contracting officer* has submitted an *e98* to the Department of Labor requesting a prevailing *wage determination* and has not received a response within 10 days, the *contracting officer* shall contact the *Wage and Hour Division* by telephone to determine when the *wage determination* can be expected. (The telephone number is provided on the *e98* website.)

## **22.1012-2 Wage determinations based on collective bargaining agreements.**

(a) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under [41 U.S.C. 6707\(c\)](#) if the *contracting agency* has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the *contracting officer* determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the *solicitation*.

(b) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under [41 U.S.C. 6707\(c\)](#) if notice of the terms of the new or changed collective bargaining agreement is received by the *contracting agency* after award of a successor contract or a modification as specified in [22.1007\(b\)](#), provided that the contract start of

performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work *shall* be effective for purposes of the successor contract under [41 U.S.C. 6707\(c\)](#).

(c) The limitations in paragraphs (a) and (b) of this subsection *shall* apply only if timely notification required in [22.1010](#) has been given.

(d) If the *contracting officer* has submitted an *e98* to Department of Labor requesting a *wage determination* based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the *contracting officer shall* contact the *Wage and Hour Division* by telephone to determine when the *wage determination* can be expected. (The telephone number is provided on the *e98* website.) If the Department of Labor is unable to provide the *wage determination* by the latest date needed to maintain the *acquisition* schedule, the *contracting officer shall* incorporate the collective bargaining agreement itself in a *solicitation* or other contract action (e.g., exercise of *option*) and include a *wage determination* referencing that collective bargaining agreement created by use of the *Wage Determinations* at *SAM.gov* website (see [22.1008-1\(d\)\(2\)](#)).

### **22.1013 Review of wage determination.**

(a) *Based on incumbent collective bargaining agreement.* (1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the *contracting officer shall* immediately contact the *agency labor advisor* to consider instituting the procedures in [22.1021](#).

(1) If the *contracting officer* believes that an incumbent or predecessor *contractor's* agreement was not the result of arm's length negotiations, the *contracting officer shall* contact the *agency labor advisor* to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a *wage determination* not predicated upon a collective bargaining agreement, the *contracting officer shall* ascertain-

(1) If the *wage determination* does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the *wage determination* contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the *contracting officer shall* contact the *agency labor advisor* to determine appropriate action.

### **22.1014 Delay over 60 days in bid opening or commencement of work.**

If a *wage determination* was obtained through the *e98* process, and bid opening, or commencement of work under a negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted *e98*, the *contracting officer shall* submit a new *e98*. Any revision of a *wage determination* received by the *contracting agency* as a result of that

communication *shall* supersede the earlier response as the *wage determination* applicable to the particular *acquisition* subject to the time frames in [22.1012-1\(b\)](#) and (c).

### **22.1015 Discovery of errors by the Department of Labor.**

If the Department of Labor discovers and determines, whether before or after a contract award, that a *contracting officer* made an erroneous determination that the *Service Contract Labor Standards* statute did not apply to a particular *acquisition* or failed to include an appropriate *wage determination* in a covered contract, the *contracting officer*, within 30 days of notification by the Department of Labor, *shall* include in the contract the clause at [52.222-41](#) and any applicable *wage determination* issued by the *Administrator*. If the contract is subject to [41 U.S.C. 6707\(c\)](#), the *Administrator* may require retroactive application of that *wage determination*. The *contracting officer* *shall* equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a *wage determination* or revision.

### **22.1016 Statement of equivalent rates for Federal hires.**

(a) The statement required under the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, (see [22.1006\(b\)](#)) *shall* set forth those wage rates and fringe benefits that would be paid by the *contracting activity* to the various classes of *service employees* expected to be utilized under the contract if [5 U.S.C.5332](#) (General Schedule-white collar) and/or [5 U.S.C.5341](#) (Wage Board-blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees *shall* be the basic hourly rate for each class. The rate *shall* be Wage Board pay schedule step two for nonsupervisory *service employees* and step three for supervisory *service employees*.

(2) Wages paid white collar employees *shall* be an hourly rate for each class. The rate *shall* be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

### **22.1017 [Reserved]**

### **22.1018 Notification to contractors and employees.**

The *contracting officer* *shall* take the following steps to ensure that *service employees* are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the *contractor* of the labor standards requirements of the contract relating to the *Service Contract Labor Standards* statute and of the *contractor's* responsibilities under these requirements, unless it is clear that the *contractor* is fully informed.

(b) At the time of award, furnish the *contractor* Department of Labor Publication WH-1313, Notice to



Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the *Service Contract Labor Standards* statute and satisfies the notice requirements in paragraph (g) of the clause at 52.222-41, *Service Contract Labor Standards*.

(c) Attach any applicable *wage determination* to Publication WH-1313.

## **22.1019 Additional classes of service employees.**

(a) If the *contracting officer* is aware that contract performance involves classes of *service employees* not included in the *wage determination*, the *contracting officer* shall require the *contractor* to classify the unlisted classes so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 52.222-41, *Service Contract Labor Standards*). The *contractor* shall initiate the conforming procedure before unlisted classes of employees perform contract work. The *contractor* shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate. The *contracting officer* shall review the proposed classification and rate and promptly submit the completed SF 1444 (which *must* include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the *Wage and Hour Division*. Within 30 days of receipt of the request, the *Wage and Hour Division* will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the *Wage and Hour Division* will require more than 30 days to take action, it will notify the *contracting officer* within 30 days of receipt of the request that additional time is necessary.

(b) Some *wage determinations* will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications *may* not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs *may* also be used if listed on the *wage determination*, but *may* not be conformed. Conformance *may* not be used to artificially split or subdivide classifications listed in the *wage determination*. However, conforming procedures *may* be used if the work which an employee performs under the contract is not within the scope of any classification listed on the *wage determination*, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and disabled workers are permissible in accordance with paragraph (q) of the clause at 52.222-41, *Service Contract Labor Standards*.

## **22.1020 Seniority lists.**

If a contract is performed at a Federal facility where employees *may* be hired/retained by a succeeding *contractor*, the incumbent prime *contractor* is required to furnish a certified list of all *service employees* on the *contractor's* or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the *contracting officer* no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222-41, *Service Contract*

Labor Standards.) At the commencement of the succeeding contract, the *contracting officer shall* provide a copy of the list to the successor *contractor* for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor *contractors* if such benefit is required by an applicable *wage determination*.

## **22.1021 Request for hearing.**

(a) A *contracting* agency or other interested party *may* request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the *contracting* agency, the *contracting officer shall* submit a written request through appropriate channels (ordinarily the *agency labor advisor*) to—

*Administrator, Wage and Hour Division*

U.S. Department of Labor

Washington, DC 20210

(b) A request for a substantial variance hearing *shall* include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request *shall* also include-

- (1) The number of the *wage determinations* at issue;
- (2) The name of the *contracting* agency whose contract is involved;
- (3) A brief description of the services to be performed under the contract;
- (4) The status of the *procurement* and any estimated *procurement* dates, such as bid opening, contract award, and commencement date of the contract or its follow-up *option* period;
- (5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;
- (6) Names and addresses (to the extent known) of interested parties; and
- (7) Any other data required by the *Administrator*.

(c) A request for an arm's length hearing *shall* include-

- (1) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;
- (2) A statement regarding the status of the *procurement* and any estimated *procurement* dates, such as bid opening, contract award, and commencement date of the contract or its follow-up *option* period; and
- (3) Names and addresses (to the extent known) of interested parties.

(d) Unless the *Administrator* determines that extraordinary circumstances exist, the *Administrator* will not consider requests for a hearing unless received as follows:

(1) For sealed bid contracts, more than 10 days before the award of the contract; or

(2) For negotiated contracts and for contracts with provisions exceeding the initial term by *option*, before the commencement date of the contract or the follow-up *option* period.

### **22.1022 Withholding of contract payments.**

Any violations of the clause at 52.222-41, *Service Contract Labor Standards*, as amended, renders the responsible *contractor* liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The *contracting officer* may withhold-or, upon written request of the Department of Labor from a level no lower than that of Deputy Regional *Administrator, Wage and Hour Division*, Department of Labor, *shall* withhold-the amount needed to pay such underpaid employees from accrued payments due the *contractor* on the contract, or on any other prime contract (whether subject to the *Service Contract Labor Standards* statute or not) with the *contractor*. The agency *shall* place the amount withheld in a deposit fund. Such withheld funds *shall* be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), and Administrative Law Judge, or the Administrative Review Board. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

### **22.1023 Termination for default.**

As provided by the *Service Contract Labor Standards* statute, any *contractor* failure to comply with the requirements of the *contract clauses* related to the *Service Contract Labor Standards* statute *may* be grounds for *termination for default* (see paragraph (k) of the clause at 52.222-41, *Service Contract Labor Standards*).

### **22.1024 Cooperation with the Department of Labor.**

The *contracting officer* *shall* cooperate with Department of Labor representatives in the examination of records, interviews with *service employees*, and all other aspects of investigations undertaken by the Department. When asked, agencies *shall* furnish the *Wage and Hour Administrator* or a designee, any available information on *contractors*, subcontractors, their contracts, and the nature of the contract services. The *contracting officer* *shall* promptly refer, *in writing* to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints *shall* not be disclosed to the employer.

### **22.1025 Ineligibility of violators.**

Persons or firms found to be in violation of the *Service Contract Labor Standards* statute will have an active exclusion record contained in the *System for Award Management* (see 9.404). No Government contract *may* be awarded to any violator so listed because of a violation of the *Service Contract Labor Standards* statute, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This

prohibition against award to an *ineligible contractor* applies to both prime and subcontracts.

## **22.1026 Disputes concerning labor standards.**

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the *contract clause* at 52.222-41, *Service Contract Labor Standards*, and not under the clause at 52.233-1, *Disputes*.

## **Subpart 22.11 - Professional Employee Compensation**

### **22.1101 Applicability.**

The *Service Contract Act* of 1965, now codified at 41 U.S.C. chapter 67, *Service Contract Labor Standards*, was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or *professional employees*.

### **22.1102 Definition.**

*Professional employee*, as used in this subpart, means any person meeting the definition of "employee employed in a bona fide . . . professional capacity" given in 29 CFR541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics, and teaching). To be a *professional employee*, a person *must* not only be a professional but *must* be involved essentially in discharging professional duties.

### **22.1103 Policy, procedures, and solicitation provision.**

All *professional employees* shall be compensated fairly and properly. Accordingly, the *contracting officer* shall insert the provision at 52.222-46, *Evaluation of Compensation for Professional Employees*, in *solicitations* for negotiated contracts when the contract amount is expected to exceed \$750,000 and services are to be provided which will require meaningful numbers of *professional employees*. This provision requires that *offerors* submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for *professional employees* working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low *professional employee* compensation *may* be assessed adversely as one of the factors considered in making an award.

## **Subpart 22.12 - [Reserved]**

## **Subpart 22.13 - Equal Opportunity for Veterans**

### **22.1300 Scope of subpart.**

This subpart prescribes policies and procedures for implementing the following:

- (a) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 ([38 U.S.C. 4211](#) and [4212](#)) (the Act).
- (b) The Veterans Employment Opportunities Act of 1998, Public Law 105-339.
- (c) The Jobs for Veterans Act, Public Law 107-288.
- (d) Executive Order 11701, January 24, 1973 (3 CFR 1971 - 1975 Comp., p. 752).
- (e) The regulations of the Secretary of Labor (41 CFR part 60-300 and 61-300).

### **22.1301 Definitions.**

As used in this subpart-

*Active duty wartime or campaign badge veteran* means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

*Armed Forces service medal veteran* means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a *United States* military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

*Disabled veteran* means-

- (1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

*Executive and senior management* means-

- (1) Any employee-
  - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities;

(ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(iii) Who customarily and regularly directs the work of two or more other employees; and

(iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

*Protected veteran* means a veteran who is protected under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212; specifically, a veteran who *may* be classified as a "*disabled veteran*," "*recently separated veteran*," "*active duty wartime or campaign badge veteran*," or an "*Armed Forces service medal veteran*," as defined by this section.

*Qualified disabled veteran* means a *disabled veteran* who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

*Recently separated veteran* means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

*United States*, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

## **22.1302 Policy.**

(a) Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to-

(1) List all employment openings, with the appropriate employment service delivery system where the opening occurs, except for-

(i) *Executive and senior management* positions;

(ii) Positions to be filled from within the contractor's organization; and

(iii) Positions lasting three days or less.

(2) Take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including *qualified disabled veterans*, without discrimination based upon their status as a *protected veteran*, in all employment practices;

(3) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit *protected veterans*; and

(4) ) Establish a hiring benchmark and apply it to hiring of *protected veterans* in each establishment, on an annual basis, in the manner prescribed in the regulations of the Secretary of Labor.

(b) Except for contracts for *commercial products* or *commercial services*, or contracts that do not exceed the *simplified acquisition threshold*, *contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted the required annual VETS-4212, Federal Contractor Veterans' Employment Report (VETS-4212 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.*

### **22.1303 Applicability.**

(a) The Act applies to all contracts and subcontracts for *personal property* and nonpersonal services (including *construction*) of \$150,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Equal Opportunity for Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(c) The Act requires submission of the VETS-4212 Report in all cases where the contractor or subcontractor has received an award of \$150,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the *United States*.

### **22.1304 Procedures.**

To verify if a proposed contractor is current with its submission of the VETS-4212 Report, the *contracting officer may-*

(a) Query the Department of Labor's VETS-4212 Database via the Internet at <http://www.dol.gov/vets/vets4212.htm> under "Filing Verification" and

(b) Contact the VETS-4212 customer support via e-mail at [VETS4212-customersupport@dol.gov](mailto:VETS4212-customersupport@dol.gov) for confirmation, if the proposed contractor represents that it has submitted the VETS-4212 Report and is not listed on the verification file.

### **22.1305 Waivers.**

(a) The Director, Office of Federal Contract Compliance Programs, Department of Labor, *may* waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, for-

(1) Any contract if a waiver is in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is-

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The *head of the agency* may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the *head of the agency* must notify the Deputy Assistant Secretary of Labor *in writing* within 30 days.

(c) The *contracting officer* must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor *may* withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For *procurements* entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

### **22.1306 Department of Labor notices and reports.**

(a) The *contracting officer* must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (see <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>).

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of *protected veterans* (*i.e.*, *active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans*, unless all of the terms of the clause at [52.222-35](#), Equal Opportunity for Veterans, have been waived see [22.1305](#)). The contractor and subcontractor *must* file VETS-4212, Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

### **22.1307 Collective bargaining agreements.**

If performance under the clause at [52.222-35](#), Equal Opportunity for Veterans, *may* necessitate a revision of a collective bargaining agreement, the *contracting officer* must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the *contracting officer* nor any representative of the *contracting officer* may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

### **22.1308 Complaint procedures.**

Following agency procedures, the *contracting office* must forward any complaints received about the administration of the Act to the Veterans' Employment and Training Service of the Department of Labor, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veterans' Employment Representative or designee, at the local State employment office. The Director, Office of Federal Contract Compliance Programs, is responsible for investigating complaints.



## **22.1309 Actions because of noncompliance.**

The *contracting officer* must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Equal Opportunity for Veterans. These sanctions (see 41 CFR 60-300.66) *may* include-

- (a) Withholding progress payments;
- (b) Termination or *suspension* of the contract; or
- (c) *Debarment* of the contractor.

## **22.1310 Solicitation provision and contract clauses.**

- (a)
  - (1) Insert the clause at 52.222-35, Equal Opportunity for Veterans, in *solicitations* and contracts if the expected value is \$150,000 or more, except when-
    - (i) Work is performed outside the *United States* by employees recruited outside the *United States*; or
    - (ii) The Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, has waived, in accordance with 22.1305(a), or the *head of the agency* has waived, in accordance with 22.1305(b), all of the terms of the clause.
  - (2) If the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, or the *head of the agency* waives one or more (but not all) of the terms of the clause, use the basic clause with its *Alternate I*.
- (b) Insert the clause at 52.222-37, Employment Reports on Veterans, in *solicitations* and contracts containing the clause at 52.222-35, Equal Opportunity for Veterans.
- (c) Insert the provision at 52.222-38, Compliance with Veterans' Employment Reporting Requirements, in *solicitations* when it is anticipated the contract award will exceed the *simplified acquisition threshold* and the contract is not for *acquisition* of *commercial products* or *commercial services*.

## **Subpart 22.14 - Employment of Workers with Disabilities**

### **22.1400 Scope of subpart.**

This subpart prescribes policies and procedures for implementing section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

## **22.1401 Policy.**

Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to-

- (a) Take affirmative action to employ, and advance in employment, qualified individuals with disabilities, and to otherwise treat qualified individuals without discrimination based on their physical or mental disability;
- (b) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities; and
- (c) Compare the utilization of individuals with disabilities in their workforces to the utilization goal, as prescribed in the regulations of the Secretary of Labor, on an annual basis.

## **22.1402 Applicability.**

- (a) Section 503 of the Act applies to all Government contracts in excess of \$15,000 for *supplies* and services (including *construction*) except as waived by the Secretary of Labor. The clause at [52.222-36](#), Equal Opportunity for Workers with Disabilities, implements the Act.
- (b) The requirements of the clause at [52.222-36](#), Equal Opportunity for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) *shall* not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

## **22.1403 Waivers.**

- (a) The Director of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (Director of OFCCP), *may* waive the application of any or all of the terms of the clause at [52.222-36](#), Equal Opportunity for Workers with Disabilities, for-
  - (1) Any contract if a waiver is deemed to be in the national interest; or
  - (2) Groups or categories of contracts if a waiver is in the national interest and it is-
    - (i) Impracticable to act on each request individually; and
    - (ii) Determined that the waiver will substantially contribute to convenience in administering the Act.
- (b) The head of an agency *may* waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the *head of the agency shall* notify the Director of OFCCP *in writing* within 30 days.
- (c) The *contracting officer shall* submit requests for waivers in accordance with agency procedures.
- (d) A waiver granted for a particular class of contracts *may* be withdrawn for any contract within that class whenever considered necessary by the Director of OFCCP to achieve the purposes of the

Act. The withdrawal *shall* not apply to contracts awarded before the withdrawal. The withdrawal *shall* not apply to *solicitations* under any means of sealed bidding unless it is made more than 10 days before the date set for bid opening.

#### **22.1404 Department of Labor notices.**

The *contracting officer shall* furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The *contracting officer may* obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

#### **22.1405 Collective bargaining agreements.**

If performance under the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, *may* necessitate a revision of a collective bargaining agreement, the *contracting officer shall* advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the *contracting officer* nor any representative of the *contracting officer shall* discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

#### **22.1406 Complaint procedures.**

(a) Following agency procedures, the *contracting office shall* forward any complaints received about the administration of the Act to-

(1) Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; or

(2) Any OFCCP regional or area office.

(b) The OFCCP *shall* institute investigation of each complaint and *shall* be responsible for developing a complete case record.

#### **22.1407 Actions because of noncompliance.**

The *contracting officer shall* take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Equal Opportunity for Workers with Disabilities. These sanctions (see 41 CFR60-741.66) *may* include-

(a) Withholding from payments otherwise due;

(b) Termination or *suspension* of the contract; or

(c) *Debarment* of the contractor.

## **22.1408 Contract clause.**

(a) Insert the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, in *solicitations* and contracts that exceed or are expected to exceed \$15,000, except when-

(1) Both the performance of the work and the recruitment of workers will occur outside the *United States*, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

(2) The Director of OFCCP or *agency head* has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the Director of OFCCP or *agency head* waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its *Alternate I*.

## **Subpart 22.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**

### **22.1500 Scope.**

This subpart applies to *acquisitions of supplies* that exceed the *micro-purchase threshold*.

### **22.1501 Definitions.**

As used in this subpart-

*Forced or indentured child labor* means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not *offer* himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

*List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor* means the list published by the Department of Labor in accordance with E.O.13126 of June 12,1999, Prohibition of *Acquisition of Products Produced by Forced or Indentured Child Labor*. The list identifies *products*, by their country of origin, that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by *forced or indentured child labor*.

### **22.1502 Policy.**

Agencies *must* take appropriate action to enforce the laws prohibiting the manufacture or importation of *products* that have been mined, produced, or manufactured wholly or in part by *forced or indentured child labor*, consistent with 19 U.S.C.1307,29 U.S.C.201, etseq., and 41 U.S.C.

chapter 65. Agencies *should* make every effort to avoid acquiring such *products*.

## **22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.**

(a) When issuing a *solicitation* for *supplies* expected to exceed the *micro-purchase threshold*, the *contracting officer* must check the *List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor* (the List) ( [www.dol.gov/ilab/](http://www.dol.gov/ilab/)) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product *may* have been mined, produced, or manufactured by *forced or indentured child labor*.

(b) The requirements of this subpart that result from the appearance of any *end product* on the List do not apply to a *solicitation* or contract if the identified country of origin on the List is-

(1) Israel, and the anticipated value of the *acquisition* is \$50,000 or more (see 25.406);

(2) Mexico, and the anticipated value of the *acquisition* is \$102,280 or more (see subpart 25.4); or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the *acquisition* is \$174,000 or more (see 25.402(b)).

(c) Except as provided in paragraph (b) of this section, before the *contracting officer* may make an award for an *end product* (regardless of country of origin) of a type identified by country of origin on the List the *offeror* must certify that-

(1) It will not supply any *end product* on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the *solicitation* by the *contracting officer* in the Certification Regarding Knowledge of Child Labor for Listed *End Products*; or

(2)

(i) It has made a good faith effort to determine whether *forced or indentured child labor* was used to mine, produce, or manufacture any *end product* to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the *offeror* is unaware of any such use of child labor.

(d) Absent any actual knowledge that the certification is false, the *contracting officer* must rely on the *offerors'* certifications in making award decisions.

(e) Whenever a *contracting officer* has reason to believe that *forced or indentured child labor* was used to mine, produce, or manufacture an *end product* furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the *contracting officer* must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency

procedures, except to the extent that the *end product* is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

(f) Proper certification will not prevent the head of an agency from imposing remedies in accordance with section [22.1504](#)(a)(4) if it is later discovered that the contractor has furnished an *end product* or *component* that has in fact been mined, produced, or manufactured, wholly or in part, using *forced or indentured child labor*.

## **22.1504 Violations and remedies.**

(a) *Violations*. The Government *may* impose remedies set forth in paragraph (b) of this section for the following violations (note that the violations in paragraphs (a)(3) and (a)(4) of this section go beyond violations of the requirements relating to certification of *end products*) (see [22.1503](#)):

(1) The contractor has submitted a false certification regarding knowledge of the use of *forced or indentured child labor*.

(2) The contractor has failed to cooperate as required in accordance with the clause at [52.222-19](#), Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of *forced or indentured child labor* by an Inspector General, the Attorney General, or the Secretary of the Treasury.

(3) The contractor uses *forced or indentured child labor* in its mining, production, or manufacturing processes.

(4) The contractor has furnished an *end product* or *component* mined, produced, or manufactured, wholly or in part, by *forced or indentured child labor*. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(b) Remedies.

(1) The *contracting officer may* terminate the contract.

(2) The *suspending and debarring official may* suspend the contractor in accordance with the procedures in [subpart 9.4](#).

(3) The *suspending and debarring official may* debar the contractor for a period not to exceed 3 years in accordance with the procedures in [subpart 9.4](#).

## **22.1505 Solicitation provision and contract clause.**

(a) Except as provided in paragraph (b) of [22.1503](#), insert the provision at [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed *End Products*, in all *solicitations* that are expected to exceed the *micro-purchase threshold* and are for the *acquisition* of *end products* (regardless of country of origin) of a type identified by country of origin on the *List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor*, except *solicitations for commercial products or commercial services* that include the provision at [52.212-3](#), Offeror Representations and Certifications—*Commercial Products and Commercial Services*. The *contracting officer must* identify in paragraph (b) of the provision at [52.222-18](#), Certification Regarding Knowledge of Child Labor for

Listed *End Products*, or paragraph (i)(1) of the provision at 52.212-3, any applicable *end products* and countries of origin from the List. For *solicitations* estimated to equal or exceed \$50,000, the *contracting officer must* exclude from the List in the *solicitation end products* from any countries identified at 22.1503(b), in accordance with the specified thresholds.

(b) Insert the clause at 52.222-19, Child Labor-Cooperation with Authorities and Remedies, in all *solicitations* and contracts for the *acquisition of supplies* that are expected to exceed the *micro-purchase thresholds*.

## **Subpart 22.16 - Notification of Employee Rights Under the National Labor Relations Act**

### **22.1600 Scope of subpart.**

This subpart prescribes policies and procedures to implement Executive Order 13496, dated January 30, 2009 (74 FR 6107, February 4, 2009).

### **22.1601 Definitions.**

As used in this subpart-

*Secretary* means the *Secretary* of Labor, U.S. Department of Labor.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

### **22.1602 Policy.**

(a) Executive Order 13496 requires contractors to post a notice informing employees of their rights under Federal labor laws.

(b) The *Secretary* has determined that the notice *must* contain employee rights under the National Labor Relations Act (Act), 29 U.S.C. 151 et seq. The Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self-organize, and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

### **22.1603 Exceptions.**

(a) The requirements of this subpart do not apply to-

(1) Contracts under the *simplified acquisition threshold*;

(2) Subcontracts of \$10,000 or less; and

(3) Contracts or subcontracts for work performed exclusively outside the *United States*.

(b) Exemptions granted by the *Secretary*.

(1) If the *Secretary* finds that the requirements of the Executive Order impair the ability of the Government to procure goods and services on an economical and efficient basis or if special circumstances require an exemption in order to serve the national interest, the *Secretary may* exempt a *contracting* department or agency, or groups of departments or agencies, from the requirements of any or all of the provisions of this Executive Order with respect to a particular contract or subcontract, or any class of contracts or subcontracts, including the requirement to include the clause at 52.222-40, or parts of that clause, in contracts.

(2) Requests for exemptions *may* be submitted in accordance with Department of Labor regulations at 29 CFR 471.3.

## **22.1604 Compliance evaluation and complaint investigations and sanctions for violations.**

(a) The *Secretary may* conduct compliance evaluations or investigate complaints of any contractor or subcontractor to determine if any of the requirements of the clause at 52.222-40 have been violated.

(b) *Contracting* departments and agencies *shall* cooperate with the *Secretary* and provide such information and assistance as the *Secretary may* require in the performance of the *Secretary's* functions.

(c) If the *Secretary* determines that there has been a violation, the *Secretary may* take such actions as set forth in 29 CFR 471.14.

(d) The *Secretary may* not terminate or suspend a contract or suspend or debar a contractor if the *agency head* has provided written objections, which *must* include a statement of reasons for the objection and a finding that the contractor's performance is essential to the agency's mission, and continues to object to the imposition of such sanctions and penalties. Procedures for enforcement by the *Secretary* are set out in 29 CFR 471.10 through 29 CFR 471.16.

## **22.1605 Contract clause.**

(a) Insert the clause at 52.222-40, Notification of Employee Rights under the National Labor Relations Act, in all *solicitations* and contracts, including *acquisitions* for *commercial products*, *commercial services*, and commercially available off-the-shelf items, except *acquisitions-*

(1) *Under the simplified acquisition threshold*. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the *simplified acquisition threshold*;

(2) For work performed exclusively outside the *United States*; or

(3) Covered (in their entirety) by an exemption granted by the *Secretary*.

(b) A *contracting* agency *may* modify the clause at 52.222-40, if necessary, to reflect an exemption



granted by the *Secretary* (see [22.1603\(b\)](#)).

## **Subpart 22.17 - Combating Trafficking in Persons**

### **22.1700 Scope of subpart.**

This subpart prescribes policy for implementing [22 U.S.C. chapter 78](#) and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012.

### **22.1701 Applicability.**

(a) This subpart applies to all *acquisitions*.

(b) The requirement at [22.1703\(c\)](#) for a certification and compliance plan applies only to any portion of a contract or *subcontract* that-

(1) Is for *supplies*, other than commercially available off-the-shelf (COTS) items, to be acquired outside the *United States*, or services to be performed outside the *United States*; and

(2) Has an estimated value that exceeds \$550,000.

### **22.1702 Definitions.**

As used in this subpart-

*Agent* means any individual, including a director, an officer, an *employee*, or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an *employee* of the Contractor directly engaged in the performance of work under

the contract who has other than a minimal impact or involvement in contract performance.

*Forced labor* means knowingly providing or obtaining the labor or services of a person-

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

*Involuntary servitude* includes a condition of servitude induced by means of-

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

*Recruitment fees* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

- (1) *Recruitment fees* include, but are not limited to, the following fees (when they are associated with the recruiting process) for-
  - (i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing *employees* or potential *employees*;
  - (ii) Advertising;
  - (iii) Obtaining permanent or temporary labor certification, including any associated fees;
  - (iv) Processing applications and petitions;
  - (v) Acquiring visas, including any associated fees;
  - (vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;
  - (vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;
  - (viii) An employer's recruiters, *agents* or attorneys, or other notary or legal fees;
  - (ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to *employees* or potential *employees*;
  - (x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;
  - (xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and *insurance*; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) *Agents*;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/*affiliates* of the employer;

(F) Any *agent* or *employee* of such entities; and

(G) *Subcontractors* at all tiers.

*Severe forms of trafficking in persons* means-

(1) *Sex trafficking* in which a *commercial sex act* is induced by force, fraud, or *coercion*, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or *coercion* for the purpose of subsection to *involuntary servitude*, *peonage*, *debt bondage*, or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a *commercial sex act*.

*Subcontract* means any contract entered into by a *subcontractor* to furnish *supplies* or services for performance of a prime contract or a *subcontract*.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes *supplies* or services to

or for a prime contractor or another *subcontractor*.

*United States* means the 50 States, the District of Columbia, and *outlying areas*.

## **22.1703 Policy.**

The *United States* Government has adopted a policy prohibiting trafficking in persons, including the trafficking-related activities below. Additional information about trafficking in persons *may* be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip> . See 47.405(b) for contract reporting requirements concerning training to prevent human trafficking for domestic carrier air transportation; 47.405(b) is not applicable to contracts awarded by the Department of Defense or contracts for *commercial products*. Government *solicitations* and contracts *shall*—

(a) Prohibit contractors, contractor *employees*, *subcontractors*, *subcontractor employees*, and their *agents* from-

(1) Engaging in *severe forms of trafficking in persons* during the period of performance of the contract;

(2) Procuring *commercial sex acts* during the period of performance of the contract;

(3) Using *forced labor* in the performance of the contract;

(4) Destroying, concealing, confiscating, or otherwise denying access by an *employee* to the *employee's* identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Using misleading or fraudulent practices during the recruitment of *employees* or offering of employment, such as failing to disclose, in a format and language understood by the *employee* or potential *employee*, basic information or making material misrepresentations during the recruitment of *employees* regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or *agent* provided or arranged), any significant costs to be charged to the *employee* or potential *employee*, and, if applicable, the hazardous nature of the work;

(ii) Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charging *employees* or potential *employees* *recruitment fees*;

(7)

(i)

(A) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an *employee* who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government

contract or *subcontract*, for portions of contracts and *subcontracts* performed outside the *United States*; or

(B) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an *employee* who is not a *United States* national and who was brought into the *United States* for the purpose of working on a U.S. Government contract or *subcontract*, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the *employee* for portions of contracts and *subcontracts* performed inside the *United States*; except that-

(ii) The requirements of paragraph (a)(7)(i) of this section do not apply to an *employee* who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the *contracting* agency, designated by the *agency head* in accordance with agency procedures, from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (a)(7)(i) of this section are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor *shall* provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor *shall* also *offer* return transportation to a witness at a time that supports the witness' need to testify. This paragraph does not apply when the exemptions at paragraph (a)(7)(ii) of this section apply.

(8) Providing or arranging housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document *in writing*. Such written document *shall* be in a language the *employee* understands. If the *employee* must relocate to perform the work, the work document *shall* be provided to the *employee* at least five days prior to the *employee* relocating. The *employee's* work document *shall* include, but is not limited to, details about work description, wages, prohibition on charging *recruitment fees*, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons. The *contracting officer* *shall* consider the risk that the contract or *subcontract* will involve services or *supplies* susceptible to trafficking in persons, and the number of non-U.S. citizens expected to be employed, when deciding whether to require work documents in the contract;

(b) Require contractors and *subcontractors* to notify *employees* of the prohibited activities described in paragraph (a) of this section and the actions that *may* be taken against them for violations;

(c) With regard to certification and a compliance plan-

(1)

(i) Require the apparent successful *offeror* to provide, before contract award, a certification (see [52.222-56](#)) that the *offeror* has a compliance plan if any portion of the contract or *subcontract*-

(A) Is for *supplies*, other than COTS items (see [2.101](#)), to be acquired outside the *United States*, or

services to be performed outside the *United States*; and

(B) The estimated value exceeds \$550,000.

(ii) The certification *must* state that-

(A) The *offeror* has implemented the plan and has implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a *subcontractor* or *agent* engaging in prohibited activities; and

(B) After having conducted due diligence, either-

(1) To the best of the *offeror's* knowledge and belief, neither it nor any of its *agents*, proposed *subcontractors*, or their *agents*, has engaged in any such activities; or

(2) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the *offeror* or proposed *subcontractor* has taken the appropriate remedial and referral actions;

(2) Require annual certifications (see 52.222-50(h)(5)) during performance of the contract, when a compliance plan was required at award;

(3)

(i) Require the contractor to obtain a certification from each *subcontractor*, prior to award of a *subcontract*, if any portion of the *subcontract*-

(A) Is for *supplies*, other than COTS items (see 2.101), to be acquired outside the *United States*, or services to be performed outside the *United States*; and

(B) The estimated value exceeds \$550,000.

(ii) The certification *must* state that-

(A) The *subcontractor* has implemented a compliance plan; and

(B) After having conducted due diligence, either-

(1) To the best of the *subcontractor's* knowledge and belief, neither it nor any of its *agents*, *subcontractors*, or their *agents*, has engaged in any such activities; or

(2) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the *subcontractor* has taken the appropriate remedial and referral actions;

(4) Require the contractor to obtain annual certifications from *subcontractors* during performance of the contract, when a compliance plan was required at the time of *subcontract* award; and

(5) Require that any compliance plan or procedures *shall* be appropriate to the size and complexity of the contract and the nature and scope of its activities, including the number of non-U.S. citizens expected to be employed and the risk that the contract or *subcontract* will involve services or *supplies* susceptible to trafficking in persons. The minimum elements of the plan are specified at 52.222-50(h);

(d) Require the contractor and *subcontractors* to-

- (1) Disclose to the *contracting officer* and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
- (2) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
- (3) Cooperate fully in providing reasonable access to their facilities and staff (both inside and outside the U.S.) to allow *contracting* agencies and other responsible *Federal agencies* to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act ( [22 U.S.C. chapter 78](#)), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the *procurement* of *commercial sex acts*, or the use of *forced labor*; and
- (4) Protect all *employees* suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the *employee* was recruited, and *shall* not prevent or hinder the ability of these *employees* from cooperating fully with Government authorities; and
- (e) Provide suitable remedies, including termination, to be imposed on contractors that fail to comply with the requirements of paragraphs (a) through (d) of this section.

## **22.1704 Violations and remedies.**

(a) Violations. It is a violation of the Trafficking Victims Protection Act of 2000, as amended, ([22 U.S.C. chapter 78](#)), E.O. 13627, or the policies of this subpart if—

- (1) The contractor, contractor *employee*, *subcontractor*, *subcontractor employee*, or *agent* engages in *severe forms of trafficking in persons* during the period of performance of the contract;
- (2) The contractor, contractor *employee*, *subcontractor*, *subcontractor employee*, or *agent* procures a *commercial sex act* during the period of performance of the contract;
- (3) The contractor, contractor *employee*, *subcontractor*, *subcontractor employee*, or *agent* uses *forced labor* in the performance of the contract; or
- (4) The contractor fails to comply with the requirements of the clause at [52.222-50](#), Combating Trafficking in Persons.

(b) Credible information. Upon receipt of credible information regarding a violation listed in paragraph (a) of this section, the *contracting officer*—

- (1) *Shall* promptly notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement officials with jurisdiction over the alleged offense; and
- (2) *May* direct the contractor to take specific steps to abate the alleged violation or enforce the requirements of its compliance plan.

(c) Receipt of agency Inspector General report.

- (1) The head of an *executive agency shall* ensure that the *contracting officer* is provided a copy of the agency Inspector General report of an investigation of a violation of the trafficking in persons

prohibitions in [22.1703\(a\)](#) and [52.222-50\(b\)](#).

(2)

(i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the *executive agency*, in accordance with agency procedures, *shall* delegate to an authorized agency official, such as the agency suspending and debarring official, the responsibility to-

(A) Expeditiously conduct an administrative proceeding, allowing the contractor the opportunity to respond to the report;

(B) Make a final determination as to whether the allegations are substantiated; and

(C) Notify the *contracting officer* of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding is the *suspending and debarring official*, the *suspending and debarring official* has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the *suspension and debarment* procedures in [subpart 9.4](#) to suspend, propose for *debarment*, or debar the contractor, if appropriate, also considering the factors at [22.1704\(d\)\(2\)](#).

(d) Remedies. After a final determination in accordance with paragraph (c)(2)(ii) of this section that the allegations of a trafficking in persons violation are substantiated, the *contracting officer shall*—

(1) Enter the violation in FAPIIS (see [42.1503\(h\)](#)); and

(2) Consider taking any of the remedies specified in paragraph (e) of the clause at [52.222-50](#), Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the *United States* Government. When determining the appropriate remedies, the *contracting officer* may consider the following factors:

(i) Mitigating factors. The contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation, was in compliance with the plan at the time of the violation, and has taken appropriate remedial actions for the violations, that *may* include reparation to victims for such violations.

(ii) Aggravating factors. The contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by a *contracting officer* to do so.

## **22.1705 Solicitation provision and contract clause.**

(a)

(1) Insert the clause at [52.222-50](#), Combating Trafficking in Persons, in all *solicitations* and contracts.

(2) Use the clause with its *Alternate I* when the contract will be performed outside the *United States* (as defined at [22.1702](#)) and the *contracting officer* has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of "off-



limits" local establishments) that apply to contractor *employees* at the contract place of performance.

(b) Insert the provision at [52.222-56](#), Certification Regarding Trafficking in Persons Compliance Plan, in *solicitations* if

(1) It is possible that at least \$550,000 of the value of the contract *may* be performed outside the *United States*; and

(2) The *acquisition* is not entirely for commercially available off-the-shelf items.

## **Subpart 22.18 - Employment Eligibility Verification**

### **22.1800 Scope.**

This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), *United States* Citizenship and Immigration Service's employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

### **22.1801 Definitions.**

As used in this subpart-

*Commercially available off-the-shelf (COTS) item-*

(1) Means any item of supply that is-

(i) A *commercial product* (as defined in paragraph (1) of the definition of "*commercial product*" at [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural *products* and petroleum *products*. Per 46 CFR 525.1 (c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the *United States*, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee-

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in [2.101](#), entered into by a *subcontractor* to furnish *supplies* or services for performance of a prime contract or a *subcontract*. It includes but is not limited to *purchase orders*, and changes and modifications to *purchase orders*.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes *supplies* or services to or for a prime contractor or another *subcontractor*.

*United States*, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, and the U.S. Virgin Islands.

## **22.1802 Policy.**

(a) Statutes and Executive orders require employers to abide by the immigration laws of the *United States* and to employ in the *United States* only individuals who are eligible to work in the *United States*. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the *United States*, but is not a substitute for any other employment eligibility verification requirements.

(b) *Contracting officers shall* include in *solicitations* and contracts, as prescribed at [22.1803](#), requirements that Federal contractors *must*-

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the *United States*, except that the contractor *may* choose to verify only new hires assigned to the contract if the contractor is-

(i) An institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A *surety* performing under a takeover agreement entered into with a *Federal agency* pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at [52.222-54](#), in *subcontracts* for-

(i) Services, except for *commercial services* that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) *Construction*.

(c) Contractors *may* elect to verify employment eligibility of all existing employees working in the *United States* who were hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands) instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of-

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12.

(d) In exceptional cases, the *head of the contracting activity* may waive the E-Verify requirement for a contract or *subcontract* or a class of contracts or *subcontracts*, either temporarily or for the period of performance. This waiver authority *may* not be delegated.

(e) DHS and the Social Security Administration (SSA) *may* terminate a contractor's memorandum of understanding (MOU) and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency *must* refer the contractor to a *suspending and debarring official* for possible *suspension* or *debarment* action. During the period between termination of the MOU and a decision by the *suspending and debarring official* whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at [52.222-54](#). If the contractor is suspended, debarred, or subject to a voluntary exclusion as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its *suspension*, *debarment*, or voluntary exclusion. If the contractor is not suspended, debarred, or subject to a voluntary exclusion, then the contractor *must* re-enroll in E-Verify.

## **22.1803 Contract clause.**

Insert the clause at [52.222-54](#), Employment Eligibility Verification, in all *solicitations* and contracts that exceed \$150,000, except those that—

(a) Are only for work that will be performed outside the *United States*;

(b) Are for a period of performance of less than 120 days; or

(c) Are only for-

(1) Commercially available off-the-shelf items;

(2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of "*commercial products*" at [2.101](#));

(3) Items that would be COTS items if they were not bulk cargo; or

(4) *Commercial services* that are-

(i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);

(ii) Performed by the COTS provider; and

(iii) Are normally provided for that COTS item.

## **Subpart 22.19 - Increasing the Minimum Wage for**

# Contractors

## 22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, which requires minimum wages for certain *workers*; Department of Labor (DOL) implementing regulations are found at 29 CFR part 23. This E.O. superseded E.O. 13658; DOL implementing regulations for E.O. 13658 are found at 29 CFR part 10.

## 22.1901 Definitions.

As used in this subpart—

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331](#), *et seq.*).

*Worker*, (in accordance with 29 CFR 23.20)–

(1)

(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and

(A) Whose wages under such contract are governed by the Fair Labor Standards Act ([29 U.S.C. chapter 8](#)), the *Service Contract* Labor Standards statute ([41 U.S.C. chapter 67](#)), or the Wage Rate Requirements (*Construction*) statute ([40 U.S.C. chapter 31](#), subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes *workers* performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(c\)](#).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) A *worker* performs on a contract if the *worker* directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

## **22.1902 Policy.**

(a) Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts and subcontracts subject to this subpart is—

(1) At least \$15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The *Administrator* of the Wage and Hour Division (the *Administrator*) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See [22.1904](#).)

(b) Relationship with other wage rates.

(1) Nothing in this subpart *shall* excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(2) The E.O. minimum wage rate applies whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(c) Application to tipped workers. Policies and procedures in DOL regulations at 29 CFR 23.240(b) and 23.280 address the relationship between the E.O. minimum wage and wages of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

## **22.1903 Applicability.**

(a) This subpart applies to contracts covered by the *Service Contract* Labor Standards statute ([41 U.S.C. chapter 67](#), formerly known as the *Service Contract Act*, [subpart 22.10](#)), or the Wage Rate Requirements (*Construction*) statute ([40 U.S.C. chapter 31, Subchapter IV](#), formerly known as the Davis Bacon Act, [subpart 22.4](#)), that require performance in whole or in part within the *United States* (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331, et seq.](#))). When performance is in part within and in part outside the *United States*, this subpart applies to the part of the contract that is performed within the *United States*.

(b)

(1) This subpart applies to workers as defined at [22.1901](#). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) *Workers* with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) *Workers* who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This subpart does not apply to-

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e., those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the *Service Contract* Labor Standards statute or the Wage Rate Requirements (*Construction*) statute. These individuals include but are not limited to-

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(c) *Agency Labor Advisors*, as defined at 22.001, are listed at <https://www.sam.gov>, and are available to provide guidance and assistance with the application of this subpart.

## **22.1904 Annual Executive Order Minimum Wage Rate.**

(a) For the E.O. minimum wage rate that becomes effective on January 30, 2022, and annually thereafter, the *Administrator* will-

(1) Notify the public of the new E.O. minimum wage rate at least 90 days before it becomes effective by publishing a notice in the Federal Register;

(2) Publish and maintain on *Wage Determinations at SAM.gov*, <https://www.sam.gov>, or any successor site, the E.O. minimum wage rate; and

(3) Include a general notice on wage determinations which are issued under the *Service Contract* Labor Standards statute or the Wage Rate Requirements (*Construction*) statute. The notice will provide information on the E.O. minimum wage and how to obtain annual updates.

(b)

(1) The contractor *may* request a price adjustment only after the effective date of a new annual E.O. minimum wage determination published pursuant to paragraph (a). Prices will be adjusted only for

increased labor costs (including subcontractor labor costs) as a result of the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs *shall* include increases or decreases that result from changes in social security and unemployment taxes and *workers' compensation insurance*, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(2) The wage rate price adjustment under this clause is the lowest amount calculated by subtracting from the new E.O. wage rate the following: the current E.O. minimum wage rate; the current service or *construction* wage determination rate under the contract (if the wage rate is applicable to that *worker*); or the actual wage currently paid the *worker*. If the amount is zero or below, there will be no increase paid for this *worker*.

(i) Example 1 - New E.O. wage rate is \$16.10.

Previous E.O. wage rate is \$15.70.  
The current service or *construction* wage determination rate applicable to this *worker* under the contract is \$15.75.

Analysis: The calculation is  
 $\$16.10 - \$15.80 = \$.30$ .  
The price adjustment for this *worker* is \$.30.

The actual wage currently paid to the *worker* is \$15.80.

(ii) Example 2 - New E.O. wage rate is \$15.50.

Previous E.O. wage rate is \$15.10.  
The current service or *construction* wage determination rate applicable to this *worker* under the contract is \$15.75.

Analysis: The calculation is  
 $\$15.50 - \$15.80 = -\$.30$ .  
There is no price adjustment for this *worker*.

The actual wage currently paid to the *worker* is \$15.80.

(3) The *contracting officer shall* not adjust the contract price for any costs other than those identified in paragraph (b)(1) of this section, and *shall* not provide duplicate price adjustments with any price adjustment under clauses implementing the *Service Contract Labor Standards* statute or the *Wage Rate Requirements (Construction)* statute.

## **22.1905 Enforcement of Executive Order Minimum Wage Requirements.**

(a) Authority.

(1) Section 5 of the E.O. grants the authority for investigating potential violations of, and obtaining compliance with, the E.O. to the Secretary of Labor. The Secretary of Labor, in promulgating the implementing regulations required by Section 4 of the E.O., has assigned this authority to the *Administrator*. *Contracting* agencies do not have authority to conduct compliance investigations under 29 CFR part 10 or part 23 as implemented in this subpart. This does not limit the *contracting officer's* authority to otherwise enforce the terms and conditions of the contract.

(2) *Contracting officers shall* withhold payment at the direction of the *Administrator*.

(3) The *contracting officer shall* withhold payment, without a request from the *Administrator*, if the contractor fails to comply with the requirements in paragraph (e)(2) of 52.222-55, Minimum Wages for Contractor *Workers* Under Executive Order 14026 to furnish payroll records, until such time as the noncompliance is corrected.

(b) Complaints.

(1) Complaints *may* be filed with the *contracting officer* or the *Administrator* by any person, entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, *shall* not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) Upon receipt of a complaint, or if notified that the *Administrator* has received a complaint, the *contracting officer shall* report the following information, within 14 days, if available without conducting an investigation, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue N.W., Room S3006, Washington, D.C. 20210.

(i) The complaint or description of the alleged violation;

(ii) Available statements by the *worker*, contractor, or any other person regarding the alleged violation;

(iii) Evidence that clause 52.222-55, Minimum Wages for Contractor *Workers* Under Executive Order 14026, (or its predecessor for complaints under 29 CFR part 10) was included in the contract;

(iv) Information concerning known settlement negotiations between the parties, if applicable; and

(v) Any other relevant facts known to the *contracting officer* or other information requested by the Wage and Hour Division.

(c) Investigations. Complaints will be investigated by the *Administrator*, if warranted, in accordance with the procedures in 29 CFR part 23.430.

(d) Remedies and sanctions-

(1) Unpaid wages. When the *Administrator's* investigation reveals that a contractor has failed to pay the applicable E.O. minimum wage, the *Administrator* will notify the contractor and the *contracting* agency of the unpaid wage violation, and request that the contractor remedy the violation. If the contractor does not remedy the violation, the *Administrator may* direct withholding of payments due on the contract or any other contract between the contractor and the Federal Government. Upon final decision and direction of the *Administrator*, the *contracting* agency *shall* transfer the withheld funds to the Department of Labor for disbursement in accordance with the procedures at 22.406-9(c).

(2) *Antiretaliation*. When a contractor has been found to have violated paragraph (i) of clause 52.222-55, Minimum Wages for Contractor *Workers* Under Executive Order 14026, the



*Administrator may provide for relief to the worker in accordance with 29 CFR 23.440.*

(3) *Debarment.*

(i) The Department of Labor *may* initiate *debarment* proceedings under 29 CFR 23.520 whenever a contractor is found to have disregarded its obligations under 29 CFR part 23.

(ii) *Contracting officers shall* consider notifying the agency *suspending and debarring official* in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart.

(4) Retroactive inclusion of *contract clause*. If a *contracting* agency fails to include the *contract clause* in a contract to which E.O. 14026 applies, the *contracting* agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, *shall* incorporate the *contract clause* in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that *may* be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

## **22.1906 Contract clause.**

Insert the clause at [52.222-55](#), Minimum Wages for Contractor *Workers* Under Executive Order 14026, in *solicitations* and contracts that include the clause at [52.222-6](#), *Construction Wage Rate Requirements*, or [52.222-41](#), *Service Contract Labor Standards*, where work is to be performed, in whole or in part, in the *United States*.

## **Subpart 22.20 - [Reserved]**

## **Subpart 22.21 - Establishing Paid Sick Leave For Federal Contractors**

### **22.2100 Scope of subpart.**

This subpart prescribes policies and procedures to implement E.O. 13706, *Establishing Paid Sick Leave for Federal Contractors*, dated September 7, 2015, and Department of Labor implementing regulations at 29 CFR Part 13.

### **22.2101 Definitions.**

As used in this subpart (in accordance with 29 CFR [13.2](#))-

*Accrual year* means the 12-month period during which a contractor *may* limit an *employee's* accrual of *paid sick leave* to no less than 56 hours (see 29 CFR [13.5\(b\)\(1\)](#)).

*Certification issued by a health care provider* has the meaning given in 29 CFR 13.2.

*Employee-*

(1)

(i) Means any person engaged in performing work on or in connection with a contract covered by E.O. 13706; and

(A) Whose wages under such contract are governed by the *Service Contract* Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (*Construction*) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including *employees* who qualify for an exemption from the Fair Labor Standards Act's minimum wage and *overtime* provisions; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) An *employee* performs *on* a contract if the *employee* directly performs the specific services called for by the contract; and

(ii) An *employee* performs *in connection with* a contract if the *employee's* work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

*Health care provider* has the meaning given in 29 CFR 13.2.

*Multiemployer plan* means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more *employee* organizations and more than one employer.

*Paid sick leave* means compensated absence from employment that is required by E.O. 13706 and 29 CFR Part 13.

## **22.2102 Policy.**

(a) The Government *shall* require contractors to allow *employees* performing work on or in connection with a contract covered by E.O. 13706 to accrue and use *paid sick leave* in accordance with the E.O. and 29 CFR Part 13.

(b) Interaction with other laws. Nothing in E.O. 13706 or 29 CFR Part 13 *shall* excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or

municipal ordinance, or a collective bargaining agreement requiring greater *paid sick leave* or leave rights than those established under E.O. 13706 and 29 CFR Part 13. For additional details regarding interaction with the *Service Contract Labor Standards* statute, the *Wage Rate Requirements (Construction)* statute, the *Family and Medical Leave Act*, and State and local paid sick time laws, see 29 CFR 13.5(f)(2) through (4).

(c) Interaction with paid time off policies. In accordance with 29 CFR 13.5(f)(5)(i), the *paid sick leave* requirements of E.O. 13706 and 29 CFR Part 13 *may* be satisfied by a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise, where the voluntary paid time off policy meets or exceeds the requirements. For additional details regarding paid time off policies, see 29 CFR 13.5(f)(5)(ii) and (iii).

(d) Unless otherwise provided in this subpart, compliance is the responsibility of the contractor, and enforcement is the responsibility of the Department of Labor.

### **22.2103 Applicability.**

This subpart applies to-

(a) Contracts that-

(1) Are covered by the *Service Contract Labor Standards* statute (41 U.S.C. chapter 67, formerly known as the *Service Contract Act*, subpart 22.10), or the *Wage Rate Requirements (Construction)* statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the *Davis-Bacon Act*, subpart 22.4); and

(2) Require performance in whole or in part within the *United States*. When performance is in part within and in part outside the *United States*, this subpart applies to the part of the contract that is performed within the *United States*; and

(b) *Employees* performing on or in connection with such contracts whose wages are governed by the *Service Contract Labor Standards* statute, the *Wage Rate Requirements (Construction)* statute, or the *Fair Labor Standards Act*, including *employees* who qualify for an exemption from the *Fair Labor Standards Act's* minimum wage and *overtime* provisions.

### **22.2104 Exclusions.**

The following are excluded from coverage under this subpart:

(a) *Employees* performing in connection with contracts covered by the E.O. for less than 20 percent of their work hours in a given workweek. This exclusion is inapplicable to *employees* performing on contracts covered by the E.O., i.e., those *employees* directly engaged in performing the specific work called for by the contract, at any point during the workweek (see 29 CFR 13.4(e)).

(b) Until the earlier of the date the agreement terminates or January 1, 2020, *employees* whose covered work is governed by a collective bargaining agreement ratified before September 30, 2016, that-

(1) Already provides 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that *may* be used for reasons related to sickness or health care) each year;

or

(2) Provides less than 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that *may* be used for reasons related to sickness or health care) each year, provided that each year the contractor provides covered *employees* with the difference between 56 hours (or 7 days) and the amount provided under the existing agreement in accordance with 29 CFR [13.4\(f\)](#).

(c) The Government's unilateral exercise of a pre-negotiated *option* to renew an existing contract that does not contain the clause at [52.222-62](#) will not automatically trigger the application of that clause. (See definition of "new contract" at 29 CFR [13.2](#)).

## **22.2105 Paid sick leave for Federal contractors and subcontractors.**

In accordance with 29 CFR [13.5](#), and by operation of the clause at [52.222-62](#), *Paid Sick Leave Under Executive Order 13706*, the following contractor requirements apply:

(a) Accrual.

(1) Contractors are required to permit an *employee* to accrue not less than 1 hour of *paid sick leave* for every 30 hours worked on or in connection with a contract covered by the E.O. (see 29 CFR [13.5\(a\)\(1\)](#)).

(2) Contractors are required to inform each *employee, in writing*, of the amount of *paid sick leave* the *employee* has accrued but not used no less than once each pay period or each month, whichever interval is shorter, as well as upon a separation from employment and upon reinstatement of *paid sick leave*, pursuant to 29 CFR [13.5\(b\)\(4\)](#) (see 29 CFR [13.5\(a\)\(2\)](#)).

(3) Contractors *may* choose to provide *employees* with at least 56 hours of *paid sick leave* at the beginning of each *accrual year* rather than allowing the *employee* to accrue such leave based on hours worked over time (see 29 CFR [13.5\(a\)\(3\)](#)).

(b) Maximum accrual, carryover, reinstatement, and payment for unused leave.

(1) Contractors *may* limit the amount of *paid sick leave* *employees* are permitted to accrue to not less than 56 hours in each *accrual year* (see 29 CFR [13.5\(b\)\(1\)](#)).

(2) *Paid sick leave shall* carry over from one *accrual year* to the next. *Paid sick leave* carried over from the previous *accrual year shall* not count toward any limit the contractor sets on annual accrual (see 29 CFR [13.5\(b\)\(2\)](#)).

(3) Contractors *may* limit the amount of *paid sick leave* an *employee* is permitted to have available for use at any point to not less than 56 hours (see 29 CFR [13.5\(b\)\(3\)](#)).

(4) Contractors are required to reinstate *paid sick leave* for *employees* only when rehired by the same contractor within 12 months after a job separation (see 29 CFR [13.5\(b\)\(4\)](#)).

(5) Nothing in E.O. 13706 or 29 CFR Part 13 requires contractors to make a financial payment to an *employee* for accrued *paid sick leave* that has not been used upon a separation from employment. If a contractor nevertheless makes such a payment in an amount equal to or greater than the value of

the pay and benefits the *employee* would have received pursuant to 29 CFR [13.5\(c\)\(3\)](#) had the *employee* used the *paid sick leave*, the contractor is relieved of the obligation to reinstate an *employee's* accrued *paid sick leave* upon rehiring the *employee* within 12 months of the separation pursuant to 29 CFR [13.5\(b\)\(4\)](#) (see 29 CFR [13.5\(b\)\(5\)](#)).

(c) *Use*. Contractors are required to permit an *employee* to use *paid sick leave* in accordance with 29 CFR [13.5\(c\)](#).

(d) *Request for paid sick leave*. Contractors are required to permit an *employee* to use any or all of the *employee's* available *paid sick leave* upon the oral or written request of an *employee* that includes information sufficient to inform the contractor that the *employee* is seeking to be absent from work for a purpose described in 29 CFR [13.5\(c\)](#) and, to the extent reasonably feasible, the anticipated duration of the leave (see 29 CFR [13.5\(d\)](#)).

(e) *Certification or documentation for leave of 3 or more consecutive full workdays*. Contractors may require *certification issued by a health care provider* to verify the need for *paid sick leave* used for a purpose described in 29 CFR [13.5\(c\)\(1\)\(i\)](#), (ii), or (iii), or documentation from an appropriate individual or organization to verify the need for *paid sick leave* used for a purpose described in 29 CFR [13.5\(c\)\(1\)\(iv\)](#), only if the *employee* is absent for 3 or more consecutive full workdays (see 29 CFR [13.5\(e\)](#)).

## **22.2106 Prohibited acts.**

In accordance with 29 CFR 13.6, and by operation of the clause at [52.222-62](#), *Paid Sick Leave Under Executive Order 13706*, a contractor *may not*-

(a) Interfere with an *employee's* accrual or use of *paid sick leave* as required by E.O. 13706 or 29 CFR Part 13 (see 29 CFR 13.6(a));

(b) Discharge or in any other manner discriminate against any *employee* for-

(1) Using, or attempting to use, *paid sick leave* as provided for under E.O. 13706 and 29 CFR Part 13;

(2) Filing any complaint, initiating any proceeding, or otherwise asserting any right or *claim* under E.O. 13706 or 29 CFR Part 13;

(3) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 or 29 CFR Part 13; or

(4) Informing any other person about his or her rights under E.O. 13706 or 29 CFR Part 13 (see 29 CFR 13.6(b)); or

(c) Fail to make and maintain or to make available to authorized representatives of the Wage and Hour Division records for *inspection*, copying, and transcription as required by 29 CFR 13.25, or otherwise fail to comply with the requirements of 29 CFR 13.25 (see 29 CFR 13.6(c)).

## **22.2107 Waiver of rights.**

*Employees* cannot waive, nor *may* contractors induce *employees* to waive, their rights under E.O.

13706 or 29 CFR Part 13 (see 29 CFR 13.7).

## **22.2108 Multiemployer plans or other funds, plans, or programs.**

Contractors *may* fulfill their obligations under E.O. 13706 and 29 CFR Part 13 jointly with other contractors through a multi-employer plan, or *may* fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

## **22.2109 Enforcement of Executive Order 13706 paid sick leave requirements.**

(a) *Authority.* Section 4 of the E.O. grants to the Secretary of Labor the authority for investigating potential violations of, and obtaining compliance with, the E.O. The Secretary of Labor, in promulgating the implementing regulations required by section 3 of the E.O., has assigned this authority to the *Administrator* of the Wage and Hour Division. *Contracting* agencies do not have authority to conduct compliance investigations under 29 CFR Part 13 as implemented in this subpart. This does not limit the *contracting officer's* authority to otherwise enforce the terms and conditions of the contract.

(b) *Complaints.*

(1) Complaints are filed with the *Administrator* of the Wage and Hour Division and *may* be brought by any person (including the *employee*), entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, *shall* not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) If the *contracting* agency receives a complaint or is notified that the *Administrator* of the Wage and Hour Division has received a complaint, the *contracting officer shall* report, within 14 days, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue N.W., Room S3006, Washington, D.C. 20210, all of the following information that is available without conducting an investigation:

(i) The complaint or description of the alleged violation.

(ii) Available statements by the *employee*, contractor, or any other person regarding the alleged violation.

(iii) Evidence that clause [52.222-62](#), *Paid Sick Leave* Under Executive Order 13706, was included in the contract.

(iv) Information concerning known settlement negotiations between the parties, if applicable.

(v) Any other relevant facts known to the *contracting officer* or other information requested by the Wage and Hour Division.

(c) *Investigations.* Complaints will be investigated by the *Administrator* of the Wage and Hour

Division, if warranted, in accordance with the procedures in 29 CFR 13.43.

(d) *Remedies and sanctions.*

(1) *Withholding or suspending payment.* The *contracting officer shall*, upon his or her own action or upon written request of the *Administrator* of the Wage and Hour Division-

(i)

(A) Withhold or cause to be withheld from the contractor under the contract covered by the E.O. or any other Federal contract with the same contractor, so much of the accrued payments or advances as *may* be considered necessary to pay *employees* the full amount owed to compensate for any violation of E.O. 13706 or 29 CFR Part 13; and

(B) In the event of any such violation, the *contracting agency may*, after authorization or by direction of the *Administrator* of the Wage and Hour Division and written notification to the contractor, take action to cause *suspension* of any further payment, advance, or guarantee of funds until such violations have ceased; or

(ii) Take action to cause *suspension* of any further payment, advance, or guarantee of funds to a contractor that has failed to make available for *inspection*, copying, and transcription any of the records identified in 29 CFR 13.25.

(2) Civil actions to recover greater underpayments than those withheld.

(i) If the payments withheld under 29 CFR 13.11(c) are insufficient to reimburse all monetary relief due, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary of Labor, *may* bring an action against the contractor in any court of competent jurisdiction to recover the remaining amount.

(ii) The Department of Labor *shall*, to the extent possible, pay any sums it recovers in this manner directly to the *employees* who suffered the violation(s) of 29 CFR 13.6(a) or (b).

(iii) Any sum not paid to an *employee* because of inability to do so within 3 years *shall* be transferred into the Treasury of the *United States* as miscellaneous receipts.

(3) *Termination.* *Contracting officers may* consider the failure of a contractor to comply with the requirements of E.O. 13706 or 29 CFR Part 13 as grounds for *termination for default* or cause.

(4) *Debarment.*

(i) The Department of Labor *may* initiate *debarment* proceedings under 29 CFR 13.44(d) and 29 CFR 13.52 whenever a contractor is found to have disregarded its obligations under E.O. 13706 or 29 CFR Part 13.

(ii) *Contracting officers shall* consider notifying the agency *suspending and debarring official* in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart (see subpart [9.4](#)).

(5) Remedies for interference.

(i) When the *Administrator* of the Wage and Hour Division determines that a contractor has interfered with an *employee's* accrual or use of *paid sick leave* in violation of 29 CFR 13.6(a), the *Administrator* of the Wage and Hour Division will notify the contractor and the relevant *contracting* agency of the interference and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the *Administrator* of the Wage and Hour Division *shall* direct the contractor to provide any appropriate relief to the affected *employee(s)* in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief *may* include-

(A) Any pay and/or benefits denied or lost by reason of the violation;

(B) Other actual monetary losses sustained as a direct result of the violation; or

(C) Appropriate equitable or other relief.

(iii) Payment of liquidated damages in an amount equaling any monetary relief *may* also be directed unless such amount is reduced by the *Administrator* of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the E.O. or 29 CFR Part 13.

(iv) The *Administrator* of the Wage and Hour Division *may* additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as *may* be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the *Administrator* of the Wage and Hour Division *may* direct the relevant *contracting* agency to transfer the withheld funds to the Department of Labor for disbursement.

(6) Remedies for discrimination.

(i) When the *Administrator* of the Wage and Hour Division determines that a contractor has discriminated against an *employee* in violation of 29 CFR 13.6(b), the *Administrator* of the Wage and Hour Division will notify the contractor and the relevant *contracting* agency of the discrimination and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the *Administrator* of the Wage and Hour Division *shall* direct the contractor to provide appropriate relief to the affected *employee(s)* in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief *may* include, but is not limited to-

(A) Employment;

(B) Reinstatement;

(C) Promotion;

(D) Restoration of leave, or lost pay and/or benefits.

(iii) Payment of liquidated damages in an amount equaling any monetary relief *may* also be directed unless such amount is reduced by the *Administrator* of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing the contractor



had not violated the E.O. or 29 CFR Part 13.

(iv) The *Administrator* of the Wage and Hour Division *may* additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as *may* be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the *Administrator* of the Wage and Hour Division *may* direct the relevant *contracting* agency to transfer the withheld funds to the Department of Labor for disbursement.

(7) *Recordkeeping*. When a contractor fails to make, maintain, or protect records; or produce records when requested by authorized representatives of the *Administrator* of the Wage and Hour Division, or otherwise comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the *Administrator* of the Wage and Hour Division will request that the contractor remedy the violation. If the contractor fails to produce required records upon request, the *contracting officer shall*, upon his or her own action or upon direction of an authorized representative of the Department of Labor, take such action as *may* be necessary to cause *suspension* of any further payment, advance, or guarantee of funds on the contract until such time as the violations are discontinued.

(e) *Inclusion of contract clause*. If a *contracting* agency fails to include the clause at FAR [52.222-62](#) in a contract to which the E.O. applies, the *contracting officer*, on his or her own initiative or within 15 days of notification by an authorized representative of the Department of Labor, *shall* incorporate the *contract clause* in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that *may* be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

## **22.2110 Contract clause.**

Insert the clause at [52.222-62](#), *Paid Sick Leave* Under Executive Order 13706, in *solicitations* and contracts that include the clause at [52.222-6](#), *Construction Wage Rate Requirements*, or [52.222-41](#), *Service Contract Labor Standards*, where work is to be performed, in whole or in part, in the *United States* (the 50 States and the District of Columbia).