Subpart 22.4 - Labor Standards for Contracts Involving Construction

Parent topic: Part 22 - Application of Labor Laws to Government Acquisitions

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-thejob 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.chpater 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) *Highwayconstruction* 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 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 FormWH-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 CFR1.8 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 peryear 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 CFR5.11). 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*.