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.

Parent topic: 22.406 Administration and enforcement.