

# **PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION**

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 49 FR 11998, Mar. 28, 1984, unless otherwise noted.

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**Parent topic:** SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## **Subpart 922.1—Basic Labor Policies**

**922.101-70 General (applicability of Management and Operating contractor basic labor policies to certain non-Management and Operating contracts).**

(a) The policies and associated contract clauses in 970.2201 apply to the award and administration of non-Management and Operating contracts if:

(1) The contract work had been previously performed under a DOE Management and Operating contract; and/or

(2) The Contractor is required to employ all or part of the former Contractor's workforce; or

(3) The contract has been specifically designated by the Senior Procurement Executive.

(b) The non-M&O contracts described by paragraph (a) of this section may include, but are not limited to, contracts whose work is for:

(1) Environmental remediation;

(2) Decontamination and decommissioning;

(3) Environmental restoration;

(4) Infrastructure services for the site;

(5) Site closure at a current or former M&O contract site or facility; or

(6) Protective forces that provide physical security of sites at a current or former M&O contract site.

## **922.103 Overtime.**

### **922.103-4 Approvals.**

(d)

(1) Where the cost to the Government may be affected, approval of hours of work in excess of the normal workweek is justified only in those instances and for those employees where it can be shown that overtime would provide needed and demonstrable impetus to the accomplishment of Department of Energy (DOE) objectives and that all other means of meeting these objectives have been considered and found inadequate or not feasible. Accordingly, the Heads of Contracting Activities shall—

(i) Establish controls to prevent excess casual overtime and to assure that such overtime work is in the best interest of the Government. Casual overtime means—

(A) Work in excess of the normal workweek (or in excess of an authorized extended workweek) which cannot be regularly scheduled in advance; or

(B) Regularly scheduled work in excess of the normal workweek for a period of four consecutive weeks or less; and

(ii) Establish controls to assure that any use of any extended workweek schedule is in the best interest of the Government. Extended workweek means a workweek regularly scheduled and established in excess of the normal workweek for a period in excess of four consecutive weeks.

## **922.103-5 Contract clauses.**

In accordance with 48 CFR 22.101-1(e) and 48 CFR 22.103-5, the contracting officer shall insert the clause at 48 CFR 52.222-1, Notice to the Government of Labor Disputes, in all solicitations and contracts for protective services at DOE owned facilities requiring continuity of services for public safety and national security reasons. The contracting officer may insert this clause in other solicitations and contracts where a significant need for continuity in contract performance exists. See subpart [937.70](#), Protective Services Contracting, for additional policy guidance regarding protective services.

## **Subpart 922.4—Labor Standards for Contracts Involving Construction**

Source: 89 FR 89751, Nov. 13, 2024, unless otherwise noted.

### **922.406 Administration and enforcement.**

#### **922.406-1 Policy.**

This section sets forth additional controls and criteria for the application of the Construction Wage Rate Requirements Statute (40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act) (Statute) in the Department of Energy's operational or maintenance activities. The policy included in this subpart applies to M&O contracts.

(c) *Categorical exemptions.* The two categories of work discussed in paragraphs (c)

(1) and (2) of this section would normally be covered by the Statute. However, in limited circumstances, these types of work will be classified as non-covered by the Statute. These exceptions are to be narrowly construed and used only when clearly applicable. Any decision on the two categorical exemptions from Statute coverage shall be made by the Head of the Contracting Activity, without power of delegation.

(1) Work for which continuity of operations is mission-essential (*i.e.*, when life, property, or DOE operating requirements are confronted with material risks).

(2) Emergency work to combat the effects of fire, flood, earthquake, military or terrorist attacks, technological emergencies, infectious disease/pandemic influenza threats, equipment failure, accident, or other casualties, and to restart the operational activity following the casualty. This exemption will generally apply only to work directly related to restarting the activity or work.

(d) *Particular exemptions.* Work items meeting one of the following criteria normally will be classified as non-covered by the Statute:

(1) *Individual work items estimated to cost \$2,000 or less.* The total dollar amount of a contract is not the determining factor; rather, consider the cost of individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of \$2,000, shall be artificially divided into portions less

than \$2,000 for the purpose of avoiding the application of the Statute.

(2) *General operational and maintenance activities.* Service-type work that is a part of general operational and maintenance activities, including cyclic, routine, and recurring programs, or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and or repair work.

(3) *Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment.* Note: If these activities are a logical part of the construction of a facility, or where there is more than incidental construction work, relative to the overall effort involved, they are Statute covered.

(4) *Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly.* This refers to equipment, processes, and devices that are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment may be such that the professional personnel who are responsible for the test or experiment and/or data to be derived therefrom must, by necessity, participate in the assembly and interconnections. The following types of experiments are not Statute covered:

(i) *Set-up of devices and processes associated with the experiment, within established facilities, usually require utility connections.* Such set-ups are generally not covered by the Statute. (However, set-up requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute.)

(ii) *Assembly of piping and equipment, including adaptation and modification within existing hot cell facilities.* Assembly of piping and equipment, including adaptation and modification thereof, within existing hot cell facilities to prove out conceptual designs of chemical processing units or remotely controlled machining equipment.

(iii) *Assembly of materials and equipment for thermonuclear experiments.* Assembly of materials and equipment for particular aspects of thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy and to collect data thereon.

(iv) *Assembly, erection, modification, and disassembly of a loop set-up.* A loop facility differs from a loop set-up in that it is of a more permanent character. (Note that preparatory work for a loop set-up or facility requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute. Similarly, material and equipment that are installed for a loop set-up that is a permanent part of the facility, or used for a succession of experimental programs are similarly covered by the Statute.)

(v) *Reactor component experiments involving the insertion of experimental components within reactor systems without the use of a loop assembly.* Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption. (Note: Although the erection and on-site assembly of such a reactor facility is covered by the Statute, the set-up of components whose characteristics are under study are excluded from Statute coverage.)

(5) *Decontamination.* Decontamination includes washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material (except asbestos); and painting or other resurfacing, provided that such painting or resurfacing is an integral part of the

decontamination activity. Except to the extent section 1804 of the Atomic Energy Act of 1954 (as amended by Title XI of the Energy Policy Act of 1992), 42 U.S.C. 2297g-3, applies to the work at issue. Section 1804 requires all laborers and mechanics performing decontamination or decommissioning of DOE uranium enrichment facilities are paid prevailing wages.

(6) *Burial of contaminated soil waste or contained liquid.* Note, however, that the initial preparatory work readying the burial ground for use (*e.g.*, any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered by the Statute. Work performed subsequent to burial that involves the placement of concrete or other like activity is also covered by the Statute.

(e) *Statute-covered experimental development work.* Notwithstanding the exceptions in paragraph (d)(4) of this section, the following experimental development work is Statute covered: building construction, structural changes, drilling, tunneling, excavation, back-filling, modifications to utility services, as distinguished from temporary connections thereto, and set-up of equipment to be used for continuous testing (*e.g.*, a machine to be continuously used for testing the tensile strength of structural members).

(f) *Different work categories may have differing Statute coverage.* For instance, a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as not Statute covered, since it may be necessary to separate work that should be classified as Statute covered. Therefore, the Contracting Officer shall establish and maintain controls for the careful scrutiny of proposed work assignments under such contracts.

(1) Contractors whose contracts do not contemplate the performance of work covered by the Statute with the contractor's employees are not authorized to perform such work within the scope of the Statute, unless the Contracting Officer, in compliance with FAR subpart 22.4, modifies the contract.

(2) Determinations of Statute applicability are the responsibility of the HCA on a case-by-case basis. However, the HCA may delegate to the Contracting Officer, if consistent with DOE's responsibilities as described in this subsection, the authority to prescribe, from time to time, classes of work as to which applicability or non-applicability of the Statute is clear.

(g) *Contracting Officer responsibilities.* The Contracting Officer shall comply with the procedures for requesting wage determinations set forth in FAR 22.404, as necessary.

(h) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes encompasses several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment that in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is not covered by the Statute, the installation of any such manufactured items on a construction job is covered by the Statute if the installation includes more than incidental construction work relative to the overall effort involved.

## **Subpart 922.6 [Reserved]**

## **Subpart 922.8—Equal Employment Opportunity**

### **922.800 Scope of subpart.**

This subpart implements 48 CFR part 22, subpart 22.8. It applies to all DOE contracts and subcontracts.

### **922.802 [Reserved]**

### **922.803 Responsibilities.**

(a) The Director, Office of Federal Contract Compliance Programs of the Department of Labor has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Ch. 60, and assist the Department of Labor in its compliance responsibilities. DOE contracting officers will include the applicable Equal Employment Opportunity (EEO) and Affirmative Action Program (AAP) requirements in their solicitations and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs (OFCCP) (when required) prior to awarding of contracts. The provisions of 41 CFR Ch. 60, are applicable to all DOE contracts.

(d) The OFCCP requires that requests for pre-award clearances be directed to the OFCCP Regional Office in which the contractor's facility is (to be) located. If OFCCP finds the contractor in compliance, the contracting officer will be notified. Findings of non-compliance can be communicated to the contracting officer by the OFCCP or Headquarters Director or his designee. The appropriate Regional Office will provide the appropriate contact point in cases of non-compliance. The Director, Office of Civil Rights (DOE HQ), when requested, will provide assistance to contracting officers resolving non-compliance issues by providing assistance in obtaining a final decision from the OFCCP.

### **922.804 [Reserved]**

#### **922.804-1 Nonconstruction.**

In the event a prospective contractor or subcontractor is entering into its first contract containing the Equal Opportunity clause, the contracting officer shall determine that the prospective contractor understands and appears able to conform to the requirements of the EEO clause.

#### **922.804-2 Construction.**

(a) Construction contracts, including cost-sharing contracts, are subject to OFCCP orders applicable

in particular areas.

(1) When a proposed nonexempt construction contract is within a geographic area where construction is subject to the provisions of Federal EEO Bid Conditions, Part I or Part II, the solicitation shall contain those bid conditions. The contracting officer shall include in such solicitation a provision that "the offeror shall adhere to the affirmative action plan (bid conditions) set forth in this solicitation."

(2) Lists of areas for which OFCCP has designated specific affirmative action requirements are available through the Procurement Executive. Contracting officers should assure that this list and copies of pertinent orders are made available to all concerned DOE offices and to DOE contractors and construction subcontractors for work to be performed in the specified geographical areas.

*(b) Other nonexempt construction contracts.*

(1) When a proposed nonexempt construction contract is not in a "plan area" and is in the amount of \$10,000 or more, offerors must agree to comply with the Equal Employment Opportunity clause.

(2) When proposed nonexempt contracts of \$1,000,000 or over are not in plan areas and have not been designated as high impact, offerors also must submit to the contracting officer details regarding specific affirmative action steps to be taken by the offeror in connection with all work under the contract. Such details shall include estimates of the percentage of minority group persons expected to be employed in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop "Special Bid Conditions" for use on high impact projects in non-plan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are "high impact." The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP "Construction Compliance Program Operations Manual." Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Civil Rights will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal. In the case of construction acquisition by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

## **922.807 Exemptions.**

(c) Contracting officer requests for exemption from E.O. 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.