PGI Part 222 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PGI 222.1 -BASIC LABOR POLICIES

PGI 222.101 Labor relations.

PGI 222.101-1 General.

PGI 222.101-3 Reporting labor disputes.

PGI 222.101-3-70 Impact of labor disputes on defense programs.

PGI 222.101-4 Removal of items from contractors' facilities affected by work stoppages.

PGI 222.4 -LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

PGI 222.404 Construction Wage Rate Requirements statute wage determinations.

PGI 222.404-2 General requirements.

PGI 222.406 Administration and enforcement.

PGI 222.406-8 Investigations.

PGI 222.8 -EQUAL EMPLOYMENT OPPORTUNITY

PGI 222.807 Exemptions.

PGI 222.10 -SERVICE CONTRACT LABOR STANDARDS

PGI 222.1008 RESERVED

PGI 222.1008-1 Obtaining wage determinations.

PGI 222.13 -EQUAL OPPORTUNITIES FOR VETERANS

PGI 222.1305 Waivers.

PGI 222.17 -COMBATING TRAFFICKING IN PERSONS

PGI 222.1703 Policy.

PGI 222.1704 Violations and remedies.

PGI 222.74 -RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

PGI 222.7404 Waiver.

Parent topic: PGI Defense Federal Acquisition Regulation

PGI 222.1 -BASIC LABOR POLICIES

PGI 222.101 Labor relations.

PGI 222.101-1 General.

The contracting officer shall obtain approval from the labor advisor before—

(1) Contacting a national office of a labor organization, a Government agency headquarters, or any other organization on labor relations matters or disputes; or

(2) Making recommendations for plant seizure or injunctive action relating to potential or actual work stoppages.

PGI 222.101-3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely; and

(2) Disseminate information on labor disputes in accordance with departmental procedures.

PGI 222.101-3-70 Impact of labor disputes on defense programs.

(a) If the dispute involves a product, project (including construction), or service that must be obtained in order to meet schedules for urgently needed military programs or requirements, each department and agency shall consider the degree of impact of potential or actual labor disputes, and each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor.

(b)(i) The report to the labor advisor must be in narrative form and must include—

(A) Location of dispute and name of contractor or subcontractor involved;

(B) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(C) Identity of alternate sources available to furnish the supply or service within the time required; and

(D) A description of any action taken to reduce the impact.

(ii) The head of the contracting activity shall submit impact reports to the agency head when—

(A) Specifically requested; or

(B) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(iii) The labor advisor will expand the report submitted under paragraph (b)(ii) of this subsection by addressing the following, as appropriate:

(A) *Description of military program, project, or service*. Identify item, project, or service that will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(B) *Requirements and assets*. Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(*1*) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(*2*) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(*3*) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(C) *Possible measures to minimize strike impact*. Describe—

(*1*) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

(*2*) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(*3*) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(D) *Conclusion*.

(*1*) Describe the impact on operations of a 15-30, 30-60, and a 60-90 day work stoppage.

(*2*) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

PGI 222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a)(ii) Include the following information in the request:

(*1*) Contract number.

(*2*) A statement as to the urgency and criticality of the item needed.

(*3*) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.).

(*4*) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading.

(*5*) Destination of the material, if different from that specified in the contract.

PGI 222.4 -LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

PGI 222.404 Construction Wage Rate Requirements statute wage determinations.

PGI 222.404-2 General requirements.

(c)(5) Clarification concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from—

(A) For the Army - The appropriate district commander, Corps of Engineers.

(B) For the Navy - The cognizant Naval Facilities Engineering Command division.

(C) For the Air Force - The appropriate Regional Industrial Relations Office.

PGI 222.406 Administration and enforcement.

PGI 222.406-8 Investigations.

(a) Under Reorganization Plan No. 14 of 1950, contracting agencies are tasked with the primary responsibility for the conduct of labor standards compliance activities for construction contracts subject to the Construction Wage Rate Requirements statute. When such compliance assurance activities disclose potential violations that are substantial in amount (wage underpayments in excess of $1,000) or when requested by the Department of Labor, the contracting officer or a designee should take the following steps to ensure compliance with the investigative requirements of the Department of Labor:

(i) *Beginning of the investigation*. The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation, including the examination of pertinent records

and the interview of employees;

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor; and

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation*. Labor standards investigations are comprised of the following essential components:

(A) Review of the contract.

(*1*) Verify that all required labor standards and clauses and wage determinations are included in the contract.

(*2*) Review the following items in the contract file, if applicable:

(*i*) List of subcontractors.

(*ii*) Payroll statements for the contractor and subcontractors.

(*iii*) Approvals of additional classifications.

(*iv*) Data regarding apprentices and trainees as required by FAR 22.406-4.

(*v*) Daily inspector's report or other inspection reports.

(*vi*) Employee interview statements.

(*vii*) Standard Form (SF) 1413, Statement and Acknowledgement.

(B) Interview of the complainant. If the investigation is based upon the receipt of a complaint, the investigator should interview the complainant unless this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) Interview of employees and former employees.

(*1*) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(*2*) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(*3*) Former employees may be interviewed elsewhere.

(*4*) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(*5*) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(*6*) Obtain information by mail when personal interviews are impractical.

(*7*) Use SF 1445, Labor Standards Interview, for employee interviews.

(*8*) Ask employees to sign their statements and to initial any changes.

(*9*) Provide an evaluation of each employee's credibility.

(D) Interview of foremen. Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) Interview of the contractor.

(*1*) Interview the contractor whenever the investigation indicates the possibility of a violation.

(*2*) Inform the contractor that—

(*i*) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(*ii*) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(*3*) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) Review of contractor and subcontractor records.

(*1*) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406-2(a)(3).)

(*2*) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following:

(*i*) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period.

(*ii*) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract.

(*iii*) Computation of daily and weekly hours.

(*iv*) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c).

(*v*) Gross weekly wages.

(*vi*) Deductions.

(vii) Computation of net weekly wages paid to each employee.

(*viii*) Ratio of helpers, apprentices, and trainees to laborers and mechanics.

(*ix*) Apprenticeship and trainee registration and ratios.

(*x*) Computation of fringe benefits payments.

(*3*) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(*i*) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(*ii*) Follow the form used by the contractor.

(*iii*) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(*iv*) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation*. The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least—

(A) The basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in PGI 222.406-8 (a)(ii);

(F) Concluding statement concerning—

(*1*) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Wage Rate Requirements statute, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards statute;

(*2*) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(*3*) The amount of funds withheld from the contractor; and

(*4*) Other violations found; and

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(*1*) Complaint letter;

(*2*) Contract wage determination;

(*3*) Preconstruction letter and memorandum of preconstruction conference;

(*4*) Payrolls and statements indicating violations;

(*5*) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(*6*) Employee interview statements;

(*7*) Foreman interview statements;

(*8*) Statements of others interviewed, including Government personnel;

(*9*) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(*10*) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(*11*) Receipts and cancelled checks.

(d) *Contracting officer's report.* This report shall include at least—

(i) SF 1446, Labor Standards Investigation Summary Sheet;

(ii) Contracting officer's findings;

(iii) Statement as to the disposition of any contractor rebuttal to the findings;

(iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(v) Statement as to the disposition of funds available;

(vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(vii) When applicable, the following exhibits:

(A) Investigator's report.

(B) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings.

(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection.

(D) Evidence of the contractor's payment of restitution or liquidated damages (copies of receipts, cancelled checks, or supplemental payrolls).

(E) Letter from the contractor requesting relief from the liquidated damage provisions of the Contract Work Hours and Safety Standards statute.

PGI 222.8 -EQUAL EMPLOYMENT OPPORTUNITY

PGI 222.807 Exemptions.

(c) When seeking an exemption from the requirements of Executive Order 11246, submit the request with a justification through contracting channels to the labor advisor, who will forward the request to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, Office of Federal Contract Compliance Programs (OFCCP), of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP, for action.

PGI 222.10 -SERVICE CONTRACT LABOR STANDARDS

PGI 222.1008 RESERVED

PGI 222.1008-1 Obtaining wage determinations.

(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized.

(2) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, provide a cross-reference on the e98.

(3) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. When a previously conformed classification is not included in the Directory, include the job description on the e98.

PGI 222.13 -EQUAL OPPORTUNITIES FOR VETERANS

PGI 222.1305 Waivers.

(c) When seeking a waiver of any of the terms of the clause at FAR 52.222-35, Equal Opportunity for Veterans, submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1305(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1305(b).

PGI 222.17 -COMBATING TRAFFICKING IN PERSONS

For a sample checklist for auditing compliance with Combating Trafficking in Persons policy, click here.

PGI 222.1703 Policy.

(1) The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) is responsible for developing overall guidance on personnel policy issues relating to Combating Trafficking in Persons (CTIP). The DoD CTIP website is http://ctip.defense.gov/. The website includes DoD policy on CTIP, CTIP training information, and links to the National TIP hotline, the DoD IG website, the Department of State Office to Monitor and Combat Trafficking in Persons, and other Government and non-Government organization websites.

(2) Department of Defense Instruction 2200.01, reissued September 15, 2010, entitled Combating Trafficking in Persons, (located at http://www.dtic.mil/whs/directives/corres/pdf/220001p.pdf), requires the incorporation of terms and conditions in contracts performed either inside or outside the United States that—

(i) Prohibit any activities on the part of contractor employees that support or promote trafficking in persons; and

(ii) Impose suitable penalties on contractors who fail to monitor the conduct of their employees.

(3) DoD Instruction 5525.11, Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members, dated March 3, 2005, located at http://www.dtic.mil/whs/directives/corres/pdf/552511p.pdf, and as supplemented by Directive-Type Memorandum 09-015 at http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-015.pdf, implements policies and procedures, and assigns responsibilities, under the Military Extraterritorial Jurisdiction Act of 2000, as amended by section 1088 of the National Defense Authorization Act for Fiscal Year 2005, for exercising extraterritorial criminal jurisdiction over certain current and former members of the U.S. Armed Forces, and over civilians employed by or accompanying the U.S. Armed Forces outside the United States.

(4) Quality assurance surveillance plans (QASPs) that are developed in accordance with DFARS 237.172 should appropriately describe how the contracting officer's representative will monitor the contractor's performance regarding trafficking in persons such that non-compliance with FAR clause 52.222-50, Combating Trafficking in Persons, is brought to the immediate attention of the contracting officer.

(5) PD2 users shall not use system overrides or other administrative methods of developing clauses for use in PD2-generated contracts to avoid the inclusion of the clause at FAR 52.222-50, with its Alternate I, if appropriate, in solicitations and contracts.

(6) The contracting officer shall rely on the requiring activity to ascertain the existence of any additional Geographic Combatant Commander's (GCC's)/Subordinate Joint Force Commander, Trafficking In Persons, Directives or Notices, as required under PGI 225.370 , checklist item #12, that would require the use of Alternate I with the clause at FAR 52.222-50, Combating Trafficking in Persons, as required by FAR 22.1705 for contracts performed outside the United States. The

webpage is provided at https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html and by clicking on the pertinent GCC Area of Responsibility.

PGI 222.1704 Violations and remedies.

(1) If the contracting officer receives information indicating that the contractor, a contractor employee, a subcontractor, or a subcontractor employee has failed to comply with the requirements of the clause at FAR 52.222-50, the contracting officer

shall—

(i) Through the contracting officer's local commander or other designated representative, immediately notify the Combatant Commander responsible for the geographical area in which the incident has occurred; and

(ii) Provide information about any investigation and enforcement to—

(A) Program Manager, DoD CTIP Policy and Programs Support at https://ctip.defense.gov/ or by email to dodctip@mail.mil; and

(B) Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) by email to osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

(2) Reports may be made to the DoD Inspector General Hotline at http://www.dodig.mil/hotline/ or 800-424-9098, first and foremost.

(3) Reports also may be made to the National Human Trafficking Hotline at 1-888-373-7888 or to the Hotline website at https://humantraffickinghotline.org/.

PGI 222.74 -RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

PGI 222.7404 Waiver.

(c) Requests for waivers to the policy at DFARS 222.7402 must be submitted to the Secretary of Defense through the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy). Requests for waivers may be submitted via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil. Include “Waiver-Mandatory Arbitration” in the subject line of the message.