PGI 222.4 -LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

Parent topic: PGI Part 222 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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.