



JUL 27 2009

CIVILIAN AGENCY ACQUISITION LETTER 2009-02

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

Al Matera

AL MATERA

CHAIRMAN

CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT:

Consultation for Class Deviations - FAR 52.222-8, Payrolls and Basic Records

On December 19, 2008 the U.S. Department of Labor (DOL) published a final rule in the Federal Register (73 FR 77504), which revises regulations issued pursuant to the Davis-Bacon and Related Acts and the Copeland Anti-Kickback Act to better protect the personal privacy of laborers and mechanics employed on covered construction contracts. The specific Davis Bacon Act revisions, changed the prior requirement for contractors to submit weekly payrolls in accordance with 29 CFR 5.5(a)(3)(i), to include the full social security numbers and home addresses of the contractor employees on weekly transmittals. Instead, the revised DOL regulation requires that weekly payroll submissions only need include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).

The DOL revisions also provide that contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and provide that information upon request to the Contracting Officer, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The DOL revisions also provide that it is not a violation of 29 CFR 5.5(a)(3)(i), for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Contracting Officer.

Civilian Agencies other than National Aeronautics and Space Administration are advised that paragraph (b)(1), of FAR clause 52.222-8 Payrolls and basic records, should be amended to reflect the DOL revisions. However, until such time as a FAR change is made, in accordance with FAR 1.404, this memorandum constitutes consultation with the Chairperson of the CAAC for a class deviation from the clause at 52.222-8, as provided in the DOL final rule. For your convenience, a draft revised text of FAR clause at 52.222-8(b)(1), is attached for you use in drafting a class deviation.

If you have questions or need additional information regarding the substance of this letter, please contact Ernest Woodson on (202) 501-3775 or email at; ernest.woodson@gsa.gov.

Attachment

52.222-8 Payrolls and Basic Records.

As prescribed in 22.407(a), insert the following clause:

PAYROLLS AND BASIC RECORDS (DATE)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor

site]. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of Clause)