Federal Acquisition Regulation

that are subject to the Railway Labor Act; or

(iv) Employees who work at contractors’ or subcontractors’ permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to or from the site of the work.

(b) Nonconstruction contracts involving some construction work. (1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if—

(i) The construction work is to be performed on a public building or public work;

(ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Davis-Bacon Act (the word substantial relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(iii) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The requirements of this subpart do not apply if—

(i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The construction work is so merged with nonconstruction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

22.403 Statutory and regulatory requirements.

22.403–1 Davis-Bacon Act.

The Davis-Bacon Act (40 U.S.C. 3141 et seq.) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a clause (see 52.222–6) that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

[53 FR 4935, Feb. 18, 1988, as amended at 70 FR 57454, Sept. 30, 2005]

22.403–2 Copeland Act.

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222–10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

[53 FR 4935, Feb. 18, 1988, as amended at 70 FR 57454, Sept. 30, 2005]

22.403–3 Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) requires that certain contracts (see 22.305) contain a clause (see 52.222–4) specifying that no laborer or mechanic
implementing the contract shall be re-
quired or permitted to work more than
40 hours in any workweek unless paid
for all additional hours at not less than
1½ times the basic rate of pay (see
22.301).

[53 FR 4935, Feb. 18, 1988, as amended at 70
FR 57645, Sept. 30, 2005]

22.403–4 Department of Labor regula-
tions.

(a) Under the statutes referred to in
this 22.403 and Reorganization Plan No.
14 of 1950 (3 CFR 1949–53 Comp., p. 1007),
the Secretary of Labor has issued regu-
lations in Title 29, Subtitle A, Code of
Federal Regulations, prescribing stand-
ards and procedures to be observed by
the Department of Labor and the Fed-
eral contracting agencies. Those stand-
ards and procedures applicable to con-
tacts involving construction are im-
plemented in this subpart. The Depart-
ment of Labor regulations include—

(b) The Department of Labor regula-
tions include—

(1) Part 1, relating to Davis-Bacon
Act minimum wage rates;

(2) Part 3, relating to the Copeland
(Anti-Kickback) Act and requirements
for submission of weekly statements of
compliance and the preservation and
inspection of weekly payroll records;

(3) Part 5, relating to enforcement of
the Davis-Bacon Act, Contract Work
Hours and Safety Standards Act, and
Copeland (Anti-Kickback) Act;

(4) Part 6, relating to rules of prac-
tice for appealing the findings of the
Administrator, Wage and Hour Divi-
sion, in enforcement cases under the
Davis-Bacon Act, Contract Work Hours
and Safety Standards Act, Copeland
(Anti-Kickback) Act, and Service Con-
tact Act, and by which Administrative
Law Judge hearings are held; and

(5) Part 7, relating to rules of prac-
tice by which contractors and other in-
terested parties may appeal to the De-
partment of Labor Administrative Re-
view Board, decisions issued by the Ad-
ministrator, Wage and Hour Division,
or administrative law judges under the
Davis-Bacon Act, Contract Work Hours
and Safety Standards Act, or Copeland
(Anti-Kickback) Act.

(c) Refer all questions relating to the
application and interpretation of wage
determinations (including the classi-
fications therein) and the interpreta-
tion of the Department of Labor regu-
lations in this subsection to the Ad-
ministrator, Wage and Hour Division.

[53 FR 4935, Feb. 18, 1988, as amended at 66
FR 2141, Jan. 10, 2001; 66 FR 53480, Oct. 22,
2001]

22.404 Davis-Bacon Act wage deter-
minations.

The Department of Labor is respon-
sible for issuing wage determinations
reflecting prevailing wages, including
fringe benefits. The wage determina-
tions apply only to those laborers and
mechanics employed by a contractor
upon the site of the work including
drivers who transport to or from the
site materials and equipment used in
the course of contract operations. De-
terminations are issued for different
types of construction, such as building,
heavy, highway, and residential (re-
ferred to as rate schedules), and apply
only to the types of construction des-
ignated in the determination.

22.404–1 Types of wage deter-
minations.

(a) General wage determinations. (1) A
general wage determination contains
prevailing wage rates for the types of
construction designated in the deter-
mination, and is used in contracts per-
formed within a specified geographical
area. General wage determinations
contain no expiration date and remain
valid until modified, superseded, or
canceled by the Department of Labor.
Once incorporated in a contract, a gen-
eral wage determination normally re-
mains effective for the life of the con-
tract, unless the contracting officer ex-
ercises an option to extend the term of
the contract (see 22.404–12). These de-
terminations shall be used whenever
possible. They are issued at the discre-
ton of the Department of Labor either
upon receipt of an agency request or on
the Department of Labor’s own initia-
tive.

(2) General wage determinations are
published on the WDOL website. Gen-
eral wage determinations are effective
on the publication date of the wage de-
termination or upon receipt of the wage
determination by the contracting