which is not required by law, since pay-
roll records may contain information
in which the contractor’s employees
have a privacy interest, as well as in-
formation in which the contractor may
have a proprietary interest that the
Government may be obliged to protect.
Questions concerning release of this in-
formation may involve the Freedom of
Information Act (FOIA).

22.406–7 Compliance checking.
(a) General. The contracting officer
shall make checks and investigations
on all contracts covered by this sub-
part as may be necessary to ensure
compliance with the labor standards
requirement of the contract.
(b) Regular compliance checks. Regular
compliance checking includes the fol-
lowing activities:
(1) Employee interviews to determine
correctness of classifications, rates of
pay, fringe benefits payments, and
hours worked. (See Standard Form
1445.)
(2) On-site inspections to check type
of work performed, number and classi-
fication of workers, and fulfillment of
posting requirements.
(3) Payroll reviews to ensure that
payrolls of prime contractors and sub-
contractors have been submitted on
time and are complete and in compli-
cance with contract requirements.
(4) Comparison of the information in
this paragraph (b) with available data,
including daily inspector’s report and
daily logs of construction, to ensure
consistency.
(c) Special compliance checks. Situ-
tions that may require special compli-
ance checks include—
(1) Inconsistencies, errors, or omissions
detected during regular compliance
checks; or
(2) Receipt of a complaint alleging
violations. If the complaint is not spe-
cific enough, the complainant shall be
so advised and invited to submit addi-
tional information.

Conduct labor standards investiga-
tions when available information indi-
cates such action is warranted. In addi-
tion, the Department of Labor may
conduct an investigation on its own
initiative or may request a contracting
agency to do so.
(a) Contracting agency responsibilities.
Conduct an investigation when a com-
pliance check indicates that substanci-
tial or willful violations may have oc-
curred or violations have not been cor-
rected.
(1) The investigation must—
(i) Include all aspects of the contrac-
tor’s compliance with contract labor
standards requirements;
(ii) Not be limited to specific areas
raised in a complaint or uncovered dur-
ing compliance checks; and
(iii) Use personnel familiar with
labor laws and their application to con-
tracts.
(2) Do not disclose contractor em-
ployees’ oral or written statements
taken during an investigation or the
employee’s identity to anyone other
than an authorized Government official
without that employee’s prior signed
consent.
(3) Send a written request to the Ad-
ministrator, Wage and Hour Division,
to obtain—
(i) Investigation and enforcement in-
structions; or
(ii) Available pertinent Department
of Labor files.
(4) Obtain permission from the De-
partment of Labor before disclosing
material obtained from Labor Depart-
ment files, other than computations of
back wages and liquidated damages and
summaries of back wages due, to any-
one other than Government contract
administrators.
(b) Investigation report. The con-
tracting officer must review the inves-
tigation report on receipt and make
preliminary findings. The contracting
officer normally must not base adverse
findings solely on employee statements
that the employee does not wish to
have disclosed. However, if the inves-
tigation establishes a pattern of pos-
sible violations that are based on em-
ployees’ statements that are not au-
thorized for disclosure, the pattern
itself may support a finding of non-
compliance.
(c) Contractor notification. After com-
pleting the review, the contracting of-
}
corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for underpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(d) Contracting officer’s report. After taking the actions prescribed in paragraphs (b) and (c) of this subsection—

(1) The contracting officer must prepare and forward a report of any violations, including findings and supporting evidence, to the agency head. Standard Form 1446, Labor Standards Investigation Summary Sheet, is the first page of the report; and

(2) The agency head must process the report as follows:

(i) The contracting officer must send a detailed enforcement report to the Administrator, Wage and Hour Division, within 60 days after completion of the investigation, if—

(A) A contractor or subcontractor underpaid by $1,000 or more;

(B) The contracting officer believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act); or

(C) The contractor or subcontractor has not made restitution; or

(D) Future compliance has not been assured.

(ii) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (d)(2)(i) of this subsection exist, submit a summary report to the Administrator, Wage and Hour Division. The report must include—

(A) A summary of any violations;

(B) The amount of restitution paid;

(C) The number of workers who received restitution;

(D) The amount of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(E) Corrective measures taken; and

(F) Any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in paragraphs (d)(2)(i) or (ii) of this subsection are present, close the case and retain the report in the appropriate contract file.

(iv) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001), forward the report (supplemented if necessary) to the Attorney General of the United States for prosecution if the facts warrant. Notify the Administrator, Wage and Hour Division, when the report is forwarded for the Attorney General’s consideration.

(e) Department of Labor investigations. The Department of Labor will furnish the contracting officer an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose—

(1) Underpayments totaling $1,000 or more;

(2) Aggravated or willful violations (or, when the contracting officer believes that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act); or

(3) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards Act.
Federal Acquisition Regulation

22.406–10

(f) Other investigations. The Department of Labor will provide a letter summarizing the findings of the investigation to the contracting officer for all investigations that are not described in paragraph (e) of this subsection.

[65 FR 46065, July 26, 2000]

22.406–9 Withholding from or suspension of contract payments.

(a) Withholding from contract payments. If the contracting officer believes a violation exists (see 22.406–8), or upon request of the Department of Labor, the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards Act. (See 22.302.)

(1) If the contracting officer believes a violation exists or upon request of the Department of Labor, the contracting officer must withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either Davis-Bacon Act or Contract Work Hours and Safety Standards Act requirements.

(2) If a subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the contracting officer must not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) Suspension of contract payments. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, must suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(c) Disposition of contract payments withheld or suspended—(1) Forwarding wage underpayments to the Comptroller General. Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must forward to the appropriate disbursing office Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act (40 U.S.C. 276a(a)) and/or Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333). Attach to the SF 1093 a list of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief rationale for restitution. Also, the contracting officer must indicate if restitution was not made because the employee could not be located. The Government may assist underpaid employees in preparation of their claims. The disbursing office must submit the SF 1093 with attached additional data and the funds withheld (by check) to the Comptroller General (Claims Section).

(2) Returning of withheld funds to contractor. When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) Limitation on forwarding or returning funds. If the Department of Labor requested the withholding or if the findings are disputed (see 22.406–10(c)), the contracting officer must not forward the funds to the Comptroller General, or return them to the contractor without approval by the Department of Labor.

(4) Liquidated damages. Upon final administrative determination, the contracting officer must dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

[65 FR 46066, July 26, 2000, as amended at 70 FR 33667, June 8, 2005]

22.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(a) The areas of possible differences of opinion between contracting officers