DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 52, and 53

[FAR Case 2002–004]

RIN 9000–AJ79

Federal Acquisition Regulation; Labor Standards for Contracts Involving Construction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the revised definitions of ''Construction'' and ''site of the work'' in the Department of Labor (DoL) regulations. In addition, the Councils are proposing to clarify several definitions relating to labor standards for contracts involving construction and make requirements for flow down of labor clauses more precise.

DATES: Interested parties should submit comments in writing on or before February 23, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to— *farcase.2002–004@gsa.gov.* Please submit comments only and cite FAR case 2002–004 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 2002–004.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Labor (DoL) published a final rule at 65 FR 80268, December 20, 2000, revising the terms ''construction, prosecution, completion, or repair'' (29 CFR 5.2(j)) and ''site of the work'' (29 CFR 5.2(l)). The DoL rule became effective on January 19, 2001. The DOL changes were made to conform the regulations with Federal appellate court decisions and subsequent decisions of DoL's Administrative Review Board regarding the transportation of supplies and materials to or from the construction site. In addition, the DoL rule revised the definition of the ''site of the work'' to include secondary sites, other than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed. The Councils propose revisions to the definitions of ''construction, alteration, or repair'' and ''site of the work'' in 22.401, to reflect the changes in the DoL regulations. A new provision at 52.222-XX, Davis-Bacon Act—Secondary Site of the Work, is proposed to regulate potential situations where an offeror intends to perform significant portions of the building or work at a secondary site outside the primary site of the work and for which the wage determination provided by the Government for work at the primary site is not applicable.

The proposed revision to the Davis-Bacon Act clause at FAR 52.222–6 mandates that any subsequent incorporation to the contract of a wage determination for a secondary site shall become retroactively effective from the first day work under the contract was performed at that site, without any adjustment in contract price or estimated cost. This is based on the premise that secondary sites are initiatives of the offeror that can be instituted before or after contract award. The proposed rule also specifies that whenever there is transportation of portions of the building or work between the secondary site and the primary site of the work, the applicable wage determination that would prevail shall be for the primary site of the work. This decision was made in accordance with the DoL's administrative determination as outlined in the **Federal Register** at 65 FR 80276.

The Councils also proposed to revise the Davis-Bacon Act clause to establish that any wage determination for a secondary site shall be posted both at the primary site of the work and at the secondary site of the work. The Councils are proposing to include DoL's revised definition of ''site of the work'' in the Davis-Bacon Act clause.

In addition, the Councils are proposing editorial changes to other definitions in this section. Specifically, the definitions of ''apprentice'' and ''trainee'' have been listed separately in the alphabetical list of definitions rather than as a subcategory of ''laborer and mechanic.'' Also the terms ''building or work'' and ''public building or public work'' have been combined into a single term of ''building or work'' and ''public building or public work'' for definitional purposes. No substantive change is intended with these editorial changes.

The Councils propose revisions to the clause at 52.222–11, Subcontracts (Labor Standards), to clarify that it flows down only to subcontracts for construction within the United States, and that the clause entitled ''Contract Work Hours and Safety Standards Act—Overtime Compensation'' does not flow down unless included in the contract. This change is necessary because the coverage threshold for the Contract Work Hours and Safety Standards Act is $100,000 and the threshold for the Davis-Bacon Act is $2,000. Thus for construction contracts of $100,000 or less, the Contract Work Hours and Safety Standards Act clause is not included in the contract and therefore would not flow down to any subcontract. If the construction contract is in excess of $100,000, then the clause flows down to subcontracts that may require or involve the employment of laborers and mechanics including watchmen and guards without regard to the value of the subcontract. The clause at 52.222–4 is being revised to reflect this principle.

The Councils have also proposed changes to the Standard Form 1413, Statement and Acknowledgment, to require that the contractor state whether its contract contains the clause entitled ''Contract Work Hours and Safety Standards Act—Overtime Compensation,'' so that the subcontractor certification will only cover this clause if the contractor has indicated that the clause is in its contract. In addition, the Councils have proposed corrections to two of the clause titles and added to the list the clause entitled ''Compliance with Davis-Bacon and Related Act Regulations,'' which is one of the clauses for which certification is required (29 CFR 5.6(a)).

A correction is proposed to FAR 22.406–9(c). That section was incorrectly changed by FAR Case 1999–003, published in the **Federal Register** at 65 FR 46064, July 26, 2000, by redirecting the transfer of withheld funds under the Davis-Bacon to the Secretary of the Treasury instead of the Comptroller General of the General Accounting Office (GAO). Section 3(a) of the Davis-Bacon Act specifically, provides that ''the Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments

withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act.'' The proposed revision would restore the appropriate FAR language to that which existed prior to the aforementioned FAR case.

The Councils endorsed the proposal to selectively insert in FAR parts 22.404–3 through 22.404–7, ''for the primary site of the work,'' to provide clarity when the requirements do not apply to the wage determination for the secondary site of the work.

Finally, the Councils have proposed plain language changes to the clause prescriptions at FAR 22.407, and the clause at 52.222–l1.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only implements DoL regulation or clarifies the existing requirements. The Councils agree with the Department of Labor's (DoL) December 20, 2000, determination that its regulation would not have a significant economic impact on a substantial number of small entities (see **Federal Register** at 65 FR 80277). DoL stated that the rule primarily implements modifications resulting from court decisions interpreting statutory language, which would reduce the coverage of Davis-Bacon prevailing wage requirements as applied to construction contractors and subcontractors, both large and small, on Davis-Bacon and Related Act covered contracts. In addition, the rule makes a limited amendment to the site of the work definition to address an issue not contemplated under the current regulatory language—those instances where significant portions of buildings or works may be constructed at secondary sites which are not in the vicinity of the project's final resting place. DoL believes that such instances will be rare, and that any increased costs, which may arise on such projects, would be offset by the savings due to the other limitations on coverage provided by the rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 22, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies, but the Councils estimate that the current burden is unaffected by the revisions to the form. The form is being revised for clarification. The form (OMB Control Number 9000–0014) is currently approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22, 52, and 53

Government procurement.

Dated: December 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 22, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 22, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Amend section 22.401 by—

a. Adding, in alphabetical order, the definitions ''Apprentice'' and ''Trainee'';

b. Removing from the first sentence of the definition ''*Building* or *work* generally'' and removing from the third sentence ''*building* or *work*'' and adding ''building or work'' in both places;

c. Revising the definitions ''Construction, alteration, or repair'', ''Laborers or mechanics'' and ''Site of the work''; and

d. Amending the definition ''Public building or public work'' by removing ''*building* or *public work*'' and adding ''building or public work'' in its place.

The added and revised text reads as follows:

§ 22.401 Definitions.

* * * * *

Apprentice means a person—

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

* * * * *

Construction, alteration, or repair means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations—

(l) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (l)(i) and (ii) of the ''site of the work'' definition and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (l)(iii) of the ''site of work'' definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the ''site of the work'' definition in paragraph (l)(ii), and the physical place or places where the building or work will remain (paragraph (l)(i) in the ''site of the work'' definition).

Laborers or mechanics—(1) Means—

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards.

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic,

regardless of any contractual relationship alleged to exist between the contractor and those individuals.

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

* * * * *

Site of the work—(1) Means—

(i) The physical place or places where the construction called for in the contract will remain when work on it is completed (primary site of the work);

(ii) Any secondary site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project; and

(iii) Except as provided in paragraph (2) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the ''site of the work'' as defined in paragraphs (1)(i) or (ii) of this definition;

(2) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the ''site of the work.'' Such permanent, previously established facilities are not a part of the ''site of the work'', even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

* * * * *

3. Amend section 22.404–3 by revising paragraph (c) to read as follows:

22.404–3 Procedures for requesting wage determinations.

* * * * *

(c) *Time for submission of requests.* (1) The time required by the Department of Labor for processing requests for project wage determinations varies according to the facts and circumstances in each case. An agency should expect the processing to take at least 30 days. Accordingly, agencies should submit requests for project wage determinations for the primary site of the work to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

(2) Agencies should promptly submit to the Department of Labor an offeror's request for a project wage determination for a secondary site of the work. The Contracting Officer shall not extend the due date for receipt of offers as a result of such a request.

* * * * *

22.404–4 [Amended]

4. Amend section 22.404–4 by revising the section heading as set forth below; and amending paragraphs (a), (b), and (c) by adding ''for the primary site of the work'' after determination'' each time it appears.

22.404–4 Solicitations issued without wage determinations for the primary site of the work.

* * * * *

5. Amend section 22.404–5 by—

a. Revising the first sentence of paragraphs (b)(1), (b)(2) introductory text, and (b)(2)(i);

b. Revising paragraph (b)(2)(ii);

c. Revising the first sentence of paragraphs (c)(2) and (c)(3); and

d. Revising paragraph (c)(4).

The revised text reads as follows:

22.404–5 Expiration of project wage determinations.

* * * * *

(b) * * *

(1) If a project wage determination for the primary site of the work expires before bid opening, or if it appears before bid opening that a project wage determination may expire before award, the contracting officer shall request a new determination early enough to ensure its receipt before bid opening. * * *

(2) If a project wage determination for the primary site of the work expires after bid opening but before award, the contracting officer shall request an extension of the project wage determination expiration date from the Administrator, Wage and Hour Division. * * *

(i) If the new determination for the primary site of the work changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404–1. * * *

(ii) If the new determination for the primary site of the work does not change any wage rates, the contracting officer shall award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)

(c) * * *

(2) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination for the primary site of the work is being obtained. * * *

(3) If the new determination for the primary site of the work changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that submitted proposals if the closing date has passed. * * *

(4) If the new determination for the primary site of the work does not change any wage rates, the contracting officer shall amend the solicitation to include the number and date of the new determination and award the contract.

6. Amend section 22.404–6 by revising the second sentence of paragraph (a)(2), the first sentence of paragraph (a)(3), the first sentence of paragraph (b)(3), and paragraph (b)(4) to read as follows:

22.404–6 Modifications of wage determinations.

(a) * * *

(2) * * * The need to include a modification of a project wage determination for the primary site of the work in a solicitation is determined by the time of receipt of the modification by the contracting agency. * * *

(3) The need for inclusion of the modification of a general wage determination for the primary site of the work in a solicitation is determined by the publication date of the notice in the **Federal Register**, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs first. * * *

(b) * * *

(3) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer before bid opening, the contracting officer shall postpone

the bid opening, if necessary, to allow a reasonable time to amend the solicitation to incorporate the modification and permit bidders to amend their bids. * * *

(4) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in 22.404–5(b)(2)(i) or (ii).

* * * * *

22.404–8 [Amended]

7. Amend section 22.404–8 in paragraphs (b)(1) introductory text, (b)(2), and (c) by adding ''of an improper wage determination for the primary site'' after ''notification''.

22.406–9 [Amended]

8. Amend section 22.406–9 by—

a. Removing from the first sentence of paragraph (c)(1) ''Secretary of the Treasury'' and adding ''Comptroller General'' in its place and removing from the last sentence of paragraph (c)(1) ''Secretary of the Treasury'' and adding ''Comptroller General (Claims Section)'' in its place; and

b. Removing from paragraph (c)(3) ''Secretary of the Treasury'' and adding ''Comptroller General'' in its place.

9. Amend section 22.407 by—

a. Revising the heading and removing from the introductory text of paragraph (a) ''The contracting officer shall insert'' and adding ''Insert'' in its place;

b. Removing from paragraphs (a)(1) through (a)(10) ''The clause at'';

c. Removing from paragraph (b) ''The contracting officer shall insert'' and adding ''Insert'' in its place;

d. Removing from paragraph (c) ''the contracting officer shall'';

e. Removing from paragraph (d) ''The contracting shall insert'' and adding ''Insert'' in its place; and

f. Adding paragraph (h) to read as follows:

22.407 Solicitation Provision and Contract clauses.

* * * * *

(h) Insert the provision at 52.222–XX, Davis Bacon Act—Secondary Site of the Work, in solicitations in excess of $2,000 for construction within the United States.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 52.222–4 by revising the date of the clause and paragraph (e) to read as follows:

52.222–4 Contract Work Hours and Safety Standards Act— Overtime Compensation.

* * * * *

Contract Work Hours and Safety Standards Act—Overtime Compensation (Date)

* * * * *

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics including watchmen and guards and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

11. Amend section 52.222–6 by—

a. Revising the date of the clause;

b. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e);

c. Adding a new paragraph (a);

d. Revising the newly designated paragraph (b); and

e. Removing from the newly designated paragraph (c)(4) ''(b)(2)'' and ''(b)(3)'' and adding ''(c)(2)'' and ''(c)(3)'' in their places, respectively.

The revised and added text reads as follows:

52.222–6 Davis-Bacon Act.

* * * * *

Davis-Bacon Act (Date)

(a) *Definition—Site of the work*—(1) Means—

(i) The physical place or places where the construction called for in the contract will remain when work on it is completed (primary site of the work);

(ii) Any secondary site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project; and

(iii) Except as provided in paragraph (2) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool years, etc., provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the ''site of the work'' as defined in paragraph (1)(i) or (ii) of this definition;

(2) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal Contractor project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial material supplier which are established by a supplier of materials for the project before opening of bids and not on the site are not included in the ''site of the work.'' Such permanent, previously established facilities are not a part of the ''site of the work'' even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be subsequently incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination subsequently incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination applicable to the respective site of the work (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

* * * * *

12. Amend section 52.222–9 by revising the date of the clause and paragraph (a) to read as follows:

52.222–9 Apprentices and Trainees.

* * * * *

Apprentices and Trainees (Date)

(a) *Apprentices*—(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

* * * * *

13. Revise section 52.222–11 to read as follows:

52.222–11 Subcontracts (Labor Standards).

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

Subcontracts (Labor Standards) (Date)

(a) *Definition. Construction, alteration or repair,* as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the ''site of the work'' definition and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (1)(iii) of the ''site of work'' definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the ''site of the work'' definition in paragraph (1)(ii), and the physical place or places where the building or work will remain (paragraph (1)(i) in the ''site of the work'' definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination—Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in this paragraph.

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

52.222–41 [Amended]

14. Amend section 52.222–41 in paragraph (r) by removing ''Bureau of Apprenticeship and Training, Employment and Training Administration'' and adding ''Office of Apprenticeship Training, Employer, and Labor Services (OATELS)'' in its place.

15. Add provision 52.222–XX to read as follows:

52.222–XX Davis-Bacon Act—Secondary Site of the Work.

As prescribed in 22.407(h), insert the following provision:

Davis-Bacon Act—Secondary Site of the Work (Date)

(a) The offeror shall notify the Government if—

(1) The offeror intends to perform work at any secondary site, as defined in paragraph (a)(1)(ii) of the Davis-Bacon Act clause of this solicitation; and

(2) The Davis-Bacon Act is applicable to the work at any secondary site.

(b) If the wage determination provided by the Government for work at the primary place of performance is not applicable to the secondary site(s), the offeror shall—

(1) Obtain a general wage determination for the secondary site via the Internet at *www.xxx,* provide it to the Government for inclusion in any subsequent contract; or

(2) If a general wage determination is not available for the secondary site, request the Contracting Officer to obtain a project wage determination from the Department of Labor. The offeror should request the project wage determination for the secondary site as soon as possible. The due date for receipt of offers will not be extended as a result of an offeror's request for a project wage determination for a secondary site of the work.

(End of provision)

PART 53—FORMS

53.222 [Amended]

16. Amend section 53.222 in paragraph (e) by removing ''(Rev 6/89)'' and adding ''(Date)'' in its place, and removing the last sentence.

17. Amend section 53.301–1413 by revising the form to read as follows:

52.301–1413 Statement and Acknowledgement.

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STATEMENT AND ACKNOWLEDGMENT

OMB No.: 9000-0014
Expires: 10/31/2004

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PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR			5. SUBCONTRACTOR		
a. NAME			a. NAME		
b. STREET ADDRESS			b. STREET ADDRESS		
c. CITY	d. STATE	e. ZIP CODE	c. CITY	d. STATE	e. ZIP CODE

6. The prime contract ☐ does, ☐ does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."

7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:

a. NAME OF AWARDING FIRM

b. DESCRIPTION OF WORK BY SUBCONTRACTOR

DRAFT

8. PROJECT	9. LOCATION

10a. NAME OF PERSON SIGNING	11. BY *(Signature)*	12. DATE SIGNED
10b. TITLE OF PERSON SIGNING		

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

- Contract Work Hours and Safety Standards Act - Overtime Compensation - (If included in prime contract see Block 6)
- Payrolls and Basic Records
- Withholding of Funds
- Dispustes Concerning Labor Standards
- Compliance with Davis-Bacon and Related Act Regulations
- Davis-Bacon Act
- Apprentices and Trainees
- Compliance with Copeland Act Requirements
- Subcontracts (Labor Standards)
- Contract Termination - Debarment
- Certification of Eligiblity

14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

A		C	
B		D	

15a. NAME OF PERSON SIGNING	16. BY *(Signature)*	17. DATE SIGNED
15b. TITLE OF PERSON SIGNING		

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STANDARD FORM 1413 (REV.)
Prescribed by GSA/FAR (48 CFR) 53.222(e)

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