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EDWOSB concerns as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one EDWOSB contractor in accordance with 19.504(c)(1)(ii).

(b) The contracting officer shall insert the clause at 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to WOSB concerns under 19.1505(c) or 19.1506(b). This includes multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB Program as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one WOSB contractor in accordance with 19.504(c)(1)(ii).

(c) For use of clause 52.219-14, Limitations on Subcontracting, see the prescription at 19.507(e).

(d) For use of clause 52.219-33, Non-manufacturer Rule, see the prescription at 19.507(h).

[86 FR 44243, Aug. 11, 2021]

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AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

SOURCE: 48 FR 42258, Sept. 19, 1983, unless otherwise noted.

### 22.000 Scope of Part.

This part—

- (a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;
- (b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes contract clauses with respect to each pertinent labor law.

[82 FR 51530, Nov. 6, 2017]

### 22.001 Definitions.

*Administrator* or *Administrator, Wage and Hour Division*, as used in this part, means the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 or an authorized representative.

*Agency labor advisor* means an individual responsible for advising contracting agency officials on Federal contract labor matters.

*e98* means the Department of Labor's approved electronic application (<https://www.sam.gov>), whereby a contracting officer submits pertinent information to the Department of Labor and requests a Service Contract Labor Standards statute wage determination directly from the Wage and Hour Division.

*Service contract* means any Government contract, or subcontract thereunder, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted by 41 U.S.C. chapter 67, Service Contract Labor Standards; see 22.1003-3 and 22.1003-4. See 22.1003-5 and 29 CFR 4.130 for a partial list of services covered by the Service Contract Labor Standards statute.

*Service employee* means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as

those terms are defined in 29 CFR part 541. The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

*Wage Determinations at SAM.gov* means the Government internet website for both Construction Wage Rate Requirements statute and Service Contract Labor Standards statute wage determinations available at <https://www.sam.gov>.

[53 FR 4935, Feb. 18, 1988, as amended at 71 FR 36931, June 28, 2006; 77 FR 75775, Dec. 21, 2012; 79 FR 24202, Apr. 29, 2014; 79 FR 74549, Dec. 15, 2014; 83 FR 42573, Aug. 22, 2018; 86 FR 71325, Dec. 15, 2021]

## Subpart 22.1—Basic Labor Policies

### 22.101 Labor relations.

#### 22.101-1 General.

(a) Agencies shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b)(1) Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see subpart 22.5.

(c) Agencies should, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies should take other actions concerning labor relations problems to the extent consistent with their acquisition responsibilities. For example, agencies should—

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute's potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see 22.103-5(a)).

[48 FR 42258, Sept. 19, 1983, as amended at 27415, May 16, 2001; 75 FR 19177, Apr. 13, 2010]

#### **22.101-2 Contract pricing and administration.**

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see 31.205-6(b).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable

delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors' or their subcontractors' control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court.

(2) Using other available Government procedures.

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore may have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts. Certain costs may increase because of strikes; e.g., guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (e.g., *fixed costs* such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

[48 FR 42258, Sept. 19, 1983, as amended at 68 FR 43866, July 24, 2003]

#### **22.101-3 Reporting labor disputes.**

The office administering the contract shall report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the

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clause at 52.222-1, Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

### **22.101-4 Removal of items from contractors' facilities affected by work stoppages.**

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

### **22.102 Federal and State labor requirements.**

#### **22.102-1 Policy.**

Agencies shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

- (a) Safety;
- (b) Health and sanitation;
- (c) Maximum hours and minimum wages;
- (d) Equal employment opportunity;
- (e) Child and convict labor;
- (f) Age discrimination;
- (g) Disabled and Vietnam veteran employment;
- (h) Employment of workers with disabilities; and

(i) Eligibility for employment under United States immigration laws.

[48 FR 42258, Sept. 19, 1983, as amended at 56 FR 55374, Oct. 25, 1991; 73 FR 67703, Nov. 14, 2008; 79 FR 24203, Apr. 29, 2014]

### **22.102-2 Administration.**

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the DOL Employment and Training Administration (DOLETA) at <http://www.doleta.gov>, and its affiliated local offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the U.S. Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c)(1) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's Wage and Hour Division is responsible for administration and enforcement of numerous wage and hour statutes including—

(i) 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction);

(ii) 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards;

(iii) The Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145);

(iv) 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000;

(v) 41 U.S.C. chapter 67, Service Contract Labor Standards.

(2) Contracting officers should contact the Wage and Hour Division's regional offices when required by the subparts relating to these statutes unless otherwise specified. Addresses for

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these offices may be found at Appendix B to 29 CFR Part 1.

[48 FR 42258, Sept. 19, 1983, as amended at 56 FR 55374, Oct. 25, 1991; 68 FR 28082, May 22, 2003; 71 FR 36931, June 28, 2006; 79 FR 24203, Apr. 29, 2014; 80 FR 26427, May 7, 2015; 81 FR 58638, Aug. 25, 2016; 81 FR 91638, Dec. 16, 2016; 82 FR 51530, Nov. 6, 2017; 85 FR 27090, May 6, 2020]

### 22.103 Overtime.

#### 22.103-1 Definition.

*Normal workweek*, as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

(1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

(2) The hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

[48 FR 42258, Sept. 19, 1983, as amended at 51 FR 12293, Apr. 9, 1986; 66 FR 2130, Jan. 10, 2001; 68 FR 28082, May 22, 2003]

#### 22.103-2 Policy.

Contractors shall perform all contracts, so far as practicable, without using overtime, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved overtime, extra-pay shifts, and multishifts should be scheduled to achieve these objectives.

#### 22.103-3 Procedures.

(a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.

(b) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to (1) ascertain the extent that offers are based on the payment of overtime and shift premiums and (2) negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see 22.103-5(b)) that overtime will be required in contract performance, the contracting officer shall secure from

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the contractor a request for all overtime to be used during the life of the contract, to the extent that the overtime can be estimated with reasonable certainty. The contractor's request shall contain the information required by paragraph (b) of the clause at 52.222-2, Payment for Overtime Premiums.

#### 22.103-4 Approvals.

(a) The contracting officer shall review the contractor's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—

(1) Meet essential delivery or performance schedules;

(2) Make up for delays beyond the control and without the fault or negligence of the contractor; or

(3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums.

(c) Contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(8) of the clause at 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying overtime premiums under other types of contracts.

(e) Approvals by the agency approving official (see 22.103-4(a)) may be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, contractor requests for overtime exceeding the amount authorized by paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums, shall be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review the request and if it approves, send the request to the contracting officer. If the contracting officer determines that the requested overtime should be approved in whole or in part, the contracting officer shall request the approval of the

agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in part 31. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant that have been individually evaluated and the necessity for overtime confirmed shall be considered for approval.

(i) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

[48 FR 42258, Sept. 19, 1983, as amended at 71 FR 57367, Sept. 28, 2006; 72 FR 6882, Feb. 13, 2007]

#### **22.103-5 Contract clauses.**

(a) The contracting officer shall insert the clause 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e).

(b) The contracting officer shall include the clause at 52.222-2, Payment for Overtime Premiums, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold; unless (a) a cost-reimbursement contract for operation of vessels is contemplated, or (b) a cost-plus-incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

[48 FR 42258, Sept. 19, 1983, as amended at 71 FR 57367, Sept. 28, 2006]

### **Subpart 22.2—Convict Labor**

#### **22.201 General.**

(a) Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987, and Executive Order 12943, December 13, 1994, states: "The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services." The Executive order does not prohibit the contractor, in performing the contract, from employing—

- (1) Persons on parole or probation;
- (2) Persons who have been pardoned or who have served their terms;
- (3) Federal prisoners; or
- (4) Nonfederal prisoners authorized to work at paid employment in the community under the laws of a jurisdiction listed in the Executive order if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Paid employment will not—  
(A) Result in the displacement of employed workers;

(B) Be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or

(C) Impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended.

(b) Department of Justice regulations authorize the Director of the Bureau of Justice Assistance to exercise the

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power and authority vested in the Attorney General by the Executive order to certify and to revoke the certification of work-release laws or regulations (see 28 CFR 0.94-1(b)).

[61 FR 31644, June 20, 1996]

### 22.202 Contract clause.

Insert the clause at 52.222-3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

(a) The contract will be subject to 41 U.S.C. chapter 65 (see subpart 22.6), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

[48 FR 42258, Sept. 19, 1983, as amended at 60 FR 34758, July 3, 1995; 61 FR 31644, June 20, 1996; 68 FR 28082, May 22, 2003; 79 FR 24203, Apr. 29, 2014; 85 FR 27091, May 6, 2020]

## Subpart 22.3—Contract Work Hours and Safety Standards Act

### 22.300 Scope of subpart.

This subpart prescribes policies and procedures for applying the requirements of 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards (the statute) to contracts that may require or involve laborers or mechanics. In this subpart, the term “laborers or mechanics” includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

[79 FR 24203, Apr. 29, 2014]

### 22.301 Statutory requirement.

The statute requires that certain contracts contain a clause specifying

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that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all such overtime hours at not less than 1½ times the basic rate of pay.

[48 FR 42258, Sept. 19, 1983, as amended at 51 FR 12293, Apr. 9, 1986; 79 FR 24203, Apr. 29, 2014]

### 22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses underpayments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the statute. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(b) If the contractor or subcontractor fails or refuses to comply with overtime pay requirements of the statute and the funds withheld by Federal agencies for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the statute despite the exercise of due care, the agency head may—

(1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;

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(2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less; or

(3) Recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.

(d) After the contracting officer determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

[65 FR 46065, July 26, 2000, as amended at 79 FR 24203, Apr. 29, 2014; 83 FR 19149, May 1, 2018]

### 22.303 Administration and enforcement.

The procedures and reports required for construction contracts in subpart 22.4 also apply to investigations of alleged violations of the statute on other than construction contracts.

[48 FR 42258, Sept. 19, 1983, as amended at 79 FR 24203, Apr. 29, 2014]

### 22.304 Variations, tolerances, and exemptions.

(a) The Secretary of Labor under 40 U.S.C. 3706, upon the Secretary's initiative or at the request of any Federal agency, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the statute (see 29 CFR 5.15).

(b) The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR 5.14).

[51 FR 12293, Apr. 9, 1986, as amended at 70 FR 57454, Sept. 30, 2005; 79 FR 24203, Apr. 29, 2014]

### 22.305 Contract clause.

Insert the clause at 52.222-4, Contract Work Hours and Safety Standards—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below \$150,000;

(b) For commercial products and commercial services;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR 5.15);

(e) For work to be done solely in accordance with 41 U.S.C. chapter 65 (see subpart 22.6);

(f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

[68 FR 28082, May 22, 2003, as amended at 71 FR 57367, Sept. 28, 2006; 75 FR 53133, Aug. 30, 2010; 79 FR 24203, Apr. 29, 2014; 85 FR 27091, May 6, 2020; 86 FR 61028, Nov. 4, 2021]

## Subpart 22.4—Labor Standards for Contracts Involving Construction

SOURCE: 53 FR 4935, Feb. 18, 1988, unless otherwise noted.

### 22.400 Scope of subpart.

This subpart implements the statutes which prescribe labor standards requirements for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. (See definition of *Construction, alteration, or repair* in section 22.401.) Labor relations requirements prescribed in other subparts of part 22 may also apply.

[53 FR 4935, Feb. 18, 1988; 65 FR 46074, July 26, 2000]

### 22.401 Definitions.

As used in this subpart—

*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—

(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 of this section, 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 (2) of the “site of work” definition of this section; 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) of this section, and the physical place or places where the building or work will remain (paragraph (1)(i) in the “site of the work” definition of this section).

*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 statute, 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; and

(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.

*Public building or public work* means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

*Site of the work*—(1) Means—

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

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraphs (1)(i) of “the secondary site of the work” as defined in paragraph (1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments,

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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, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

*Wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Construction Wage Rate Requirements statute include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe bene-

fits do not include benefits required by other Federal, State, or local law.

[53 FR 4935, Feb. 18, 1988, as amended at 57 FR 44263, Sept. 24, 1992; 59 FR 67038, Dec. 28, 1994; 66 FR 2130, Jan. 10, 2001; 70 FR 33665, June 8, 2005; 72 FR 65872, Nov. 23, 2007; 79 FR 24203, Apr. 29, 2014]

### 22.402 Applicability.

(a) *Contracts for construction work.* (1) The requirements of this subpart apply—

(i) Only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality, and only to construction work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the construction contract, or if construction at that site is anticipated by another contract as provided in subpart 37.3;

(iii) To the manufacture or fabrication of construction materials and components conducted in connection with the construction and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iv) To painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.

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

(i) The manufacturing of components or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving construction, alteration, or repair of a public building or public work);

(iii) Employees of railroads operating under collective bargaining agreements

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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 Construction Wage Rate Requirements statute (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

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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.

[53 FR 4935, Feb. 18, 1988, as amended at 79 FR 24203, Apr. 29, 2014]

### 22.403 Statutory, Executive order, and regulatory requirements.

#### 22.403–1 Construction Wage Rate Requirements statute.

40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act, 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.

[79 FR 24203, Apr. 29, 2014]

#### 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.**

40 U.S.C. chapter 37, Contract Work Hours and Safety Standards, requires that certain contracts (see 22.305) contain a clause (see 52.222-4) specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay (see 22.301).

[79 FR 24203, Apr. 29, 2014]

**22.403-4 Executive Orders 13658 and 14026.**

Executive Order (E.O.) 13658 established minimum wages for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.4 statutory wage determination amount.

[87 FR 4121, Jan. 26, 2022]

**22.403-5 Executive Order 13706.**

Executive Order 13706 establishes paid sick leave for employees of certain Federal contractors. See subpart 22.21 and the clause at 52.222-62, Paid Sick Leave under Executive Order 13706.

[81 FR 91630, Dec. 16, 2016]

**22.403-6 Department of Labor regulations involving construction.**

(a) Under the statutes and Executive orders referred to in 22.403 and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp., p. 1007), the Secretary of Labor has issued regulations in title 29, subtitle A, Code of Federal Regulations, prescribing standards and procedures to be observed by the Depart-

ment of Labor and the Federal contracting agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart.

(b) The Department of Labor regulations include—

(1) Part 1, relating to Construction Wage Rate Requirements statute 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—

(i) Construction Wage Rate Requirements statute;

(ii) Contract Work Hours and Safety Standards statute; and

(iii) Copeland (Anti-Kickback) Act;

(4) Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the various labor statutes, and by which Administrative Law Judge hearings are held;

(5) Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Administrative Review Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the various labor statutes;

(6) Part 10, relating to establishing a minimum wage for Federal contractors; and

(7) Part 13, relating to establishing paid sick leave for Federal contractors.

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

[81 FR 91631, Dec. 16, 2016]

**22.404 Construction Wage Rate Requirements statute wage determinations.**

The Department of Labor is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations 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. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

#### **22.404-1 Types of wage determinations.**

(a) *General wage determinations.* (1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed 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 general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404-12). These determinations shall be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published on the Wage Determinations at *SAM.gov* website. General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the contracting agency, whichever occurs first. "Publication" within the meaning of this section shall occur on the first date the wage determination is published on the Wage Determinations at *SAM.gov*. Archived Construction Wage Rate Requirements statute general wage determinations that are no longer current may be accessed in the "Archived DB WD" database on Wage Determinations at *SAM.gov* website for information purposes only. Contracting officers may not use an archived wage determination in a contract action without obtaining prior approval of the Department of Labor. To obtain prior ap-

proval, contact the Department of Labor, Wage and Hour Division, using <https://www.sam.gov>, or contact the procurement agency labor advisor listed on <https://www.sam.gov>.

(b) *Project wage determinations.* A project wage determination is issued at the specific request of a contracting agency. It is used only when no general wage determination applies, and is effective for 180 calendar days from the date of the determination. However, if a determination expires before contract award, it may be possible to obtain an extension to the 180-day life of the determination (see 22.404-5(b)(2)). Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404-12).

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53480, Oct. 22, 2001; 71 FR 36932, June 28, 2006; 77 FR 204, Jan. 3, 2012; 79 FR 24204, Apr. 29, 2014; 86 FR 71325, Dec. 15, 2021]

#### **22.404-2 General requirements.**

(a) The contracting officer must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies. The contracting officer must not include project wage determinations in contracts or options other than those for which they are issued. When exercising an option to extend the term of a contract, the contracting officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(b) If the wage determination is a general wage determination or a project wage determination containing more than one rate schedule, the contracting officer shall either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule shall be applied. Inclusion by reference is not permitted.

(c) The Wage and Hour Division has issued the following general guidelines

for use in selecting the proper schedule(s) of wage rates:

(1) *Building* construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(2) *Residential* construction is generally the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(3) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to *building*, *residential*, or *heavy* construction.

(4) *Heavy* construction includes those projects that are not properly classified as either *building*, *residential*, or *highway*, and is of a catch-all nature. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., *dredging*, *water and sewer line*, *dams*, *flood control*, etc.).

(5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, guidance shall be sought before the opening of bids, or receipt of best and final offers, from the Administrator, Wage and Hour Division. Further examples are contained in Department of Labor All Agency Memoranda Numbers 130 and 131.

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

#### **22.404-3 Procedures for requesting wage determinations.**

(a) *General wage determinations.* If there is a general wage determination

on the Wage Determinations at *SAM.gov* website applicable to the project, the agency may use it without notifying the Department of Labor. When necessary, a request for a general wage determination may be made by submitting Standard Form (SF) 308, Request for Determination and Response to Request, to the Administrator, Wage and Hour Division, Attention: Branch of Construction Contract Wage Determinations, 200 Constitution Avenue, NW, Washington, DC 20210.

(b) *Project wage determinations.* If a general wage determination is not available on Wage Determinations at *SAM.gov*, a contracting agency shall submit requests for project wage determinations on SF 308 to the Department of Labor. The requests shall include the following information:

(1) The location, including the county (or other civil subdivision) and State in which the proposed project is located.

(2) The name of the project and a sufficiently detailed description of the work to indicate the types of construction involved (e.g., building, heavy, highway, residential, or other type).

(3) Any available pertinent wage payment information, unless wage patterns in the area are clearly established.

(4) The estimated cost of each project.

(5) All the classifications of laborers and mechanics likely to be employed.

(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.

(d) *Review of wage determinations.* Immediately upon receipt, the contracting agency shall examine the wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53480, Oct. 22, 2001; 70 FR 33666, June 8, 2005; 71 FR 36932, June 28, 2006; 83 FR 42573, Aug. 22, 2018; 86 FR 71325, Dec. 15, 2021]

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

(a) If a solicitation is issued before the wage determination for the primary site of the work is obtained, a notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the solicitation.

(b) In sealed bidding, bids may not be opened until a reasonable time after the wage determination for the primary site of the work has been furnished to all bidders.

(c) In negotiated acquisitions, the contracting officer may open proposals and conduct negotiations before obtaining the wage determination for the primary site of the work. However, the contracting officer shall incorporate the wage determination for the primary site of the work into the solicitation before submission of best and final offers.

[53 FR 4935, Feb. 18, 1988, as amended at 70 FR 33666, June 8, 2005]

**22.404-5 Expiration of project wage determinations.**

(a) The contracting officer shall make every effort to ensure that contract award is made before expiration of the project wage determination included in the solicitation.

(b) The following procedure applies when contracting by sealed bidding:

(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 en-

sure its receipt before bid opening. If necessary, the contracting officer shall postpone the bid opening date to allow a reasonable time to obtain the determination, amend the solicitation to incorporate the new determination, and permit bidders to amend their bids. If the new determination does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(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. The request for extension shall be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. If necessary, the contracting officer shall delay award to permit either receipt of the extension or receipt and processing of a new determination. If the request is granted, the contracting officer shall award the contract and modify it to apply the extended expiration date to the already incorporated project wage determination. (See 43.103(b)(1).) If the request is denied, the Administrator will proceed to issue a new project wage determination. Upon receipt, the contracting officer shall process the new determination as follows:

(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. Otherwise the contracting officer shall award the contract and incorporate the new determination to be effective on the date of contract award. The contracting officer shall equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates.

(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) The following procedure applies when contracting by negotiation:

(1) If a project wage determination will or does expire before contract award, the contracting officer shall request a new wage determination from the Department of Labor. If necessary, the contracting officer shall delay award while the new determination is obtained and processed.

(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. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire before receipt and full processing of the new determination.

(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 have not been eliminated from the competition if the closing date has passed. All offerors to whom wage rate information has been furnished shall be given reasonable opportunity to amend their proposals.

(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.

[53 FR 4935, Feb. 18, 1988, as amended at 70 FR 33666, June 8, 2005; 74 FR 11828, Mar. 19, 2009]

#### **22.404-6 Modifications of wage determinations.**

(a) *General.* (1) The Department of Labor may modify a wage determination to make it current by specifying only the items being changed or by re-issuing the entire determination with changes incorporated.

(2) All project wage determination modifications expire on the same day as the original determination. 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. Therefore, the contracting agency must annotate the modification of the project wage determination with the date and time immediately upon receipt.

(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 date the modified wage determination is published on the Wage Determinations at *SAM.gov*, or by the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.) During the course of the solicitation, the contracting officer shall monitor the Wage Determinations at *SAM.gov* website to determine whether the applicable wage determination has been revised. Revisions published on the Wage Determinations at *SAM.gov* website or otherwise communicated to the contracting officer within the timeframes prescribed at 22.404-6(b) and (c) are applicable and must be included in the resulting contract. Monitoring can be accomplished by use of the Wage Determinations at *SAM.gov* website's "Alert Service".

(b) The following applies when contracting by sealed bidding:

(1) A written action modifying a wage determination shall be effective if:

(i) It is received by the contracting agency, or is published on the Wage Determinations at *SAM.gov*, 10 or more calendar days before the date of bid opening; or

(ii) It is received by the contracting agency, or is published on the Wage Determinations at *SAM.gov*, less than 10 calendar days before the date of bid opening, unless the contracting officer finds that there is not reasonable time available before bid opening to notify

the prospective bidders. (If the contracting officer finds that there is not reasonable time to notify bidders, a written report of the finding shall be placed in the contract file and shall be made available to the Department of Labor upon request.)

(2) All written actions modifying wage determinations received by the contracting agency after bid opening, or modifications to general wage determinations published on the Wage Determinations at *SAM.gov* after bid opening, shall not be effective and shall not be included in the solicitation (but see paragraph (b)(6) of this subsection).

(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. If the modification does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the modification.

(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).

(5) If an effective modification is received by the contracting officer after award, the contracting officer shall modify the contract to incorporate the wage modification retroactive to the date of award and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates. If the modification does not change any wage rates and would not warrant contract price adjustment, the contracting officer shall modify the contract to include the number and date of the modification.

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination which is published on the Wage Determinations at *SAM.gov* before award,

shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An agency head may request such an extension from the Administrator. The request must be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The contracting officer shall follow the procedures in 22.404-5(b)(2).

(c) The following applies when contracting by negotiation:

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations published on the Wage Determinations at *SAM.gov* before award, shall be effective.

(2) If an effective wage modification is received by the contracting officer before award, the contracting officer shall follow the procedures in 22.404-5(c)(3) or (4).

(3) If an effective wage modification is received by the contracting officer after award, the contracting officer shall follow the procedures in 22.404-6(b)(5).

(d) The following applies when modifying a contract to exercise an option to extend the term of a contract:

(1) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of Labor prior to exercise of the option, or within 45 days after submission of a wage determination request (22.404-3(c)), whichever is later; or

(ii) The Department of Labor publishes the modification to a general wage determination on the Wage Determinations at *SAM.gov* before exercise of the option.

(2) If the contracting officer receives an effective modified wage determination either before or after execution of the contract modification to exercise the option, the contracting officer

must modify the contract to incorporate the modified wage determination, and any changed wage rates, effective as of the date that the option to extend was effective.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53480, Oct. 22, 2001; 70 FR 33666, June 8, 2005; 71 FR 36932, June 28, 2006; 86 FR 71325, Dec. 15, 2021]

**22.404-7 Correction of wage determinations containing clerical errors.**

Upon the Department of Labor's own initiative or at the request of the contracting agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections will be effective immediately, and will apply to any solicitation or active contract. Before contract award, the contracting officer must follow the procedures in 22.404-5(b)(1) or (2)(i) or (ii) in sealed bidding, and the procedures in 22.404-5(c)(3) or (4) in negotiations. After contract award, the contracting officer must follow the procedures at 22.404-6(b)(5), except that for contract modifications to exercise an option to extend the term of the contract, the contracting officer must follow the procedures at 22.404-6(d)(2).

[66 FR 53480, Oct. 22, 2001]

**22.404-8 Notification of improper wage determination before award.**

(a) The following written notifications by the Department of Labor shall be effective immediately without regard to 22.404-6 if received by the contracting officer prior to award:

(1) A solicitation includes the wrong wage determination or the wrong rate schedule; or

(2) A wage determination is withdrawn by the Administrative Review Board.

(b) In sealed bidding, the contracting officer shall proceed in accordance with the following:

(1) If the notification of an improper wage determination for the primary site of the work reaches the contracting officer before bid opening, the contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to (i) obtain the appropriate determination if a new wage

determination is required, (ii) amend the solicitation to incorporate the determination (or rate schedule), and (iii) permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(2) If the notification of an improper wage determination for the primary site of the work reaches the contracting officer after bid opening but before award, the contracting officer shall delay awarding the contract, if necessary, and if required, obtain the appropriate wage determination. The appropriate wage determination shall be processed in accordance with 22.404-5(b)(2)(i) or (ii).

(c) In negotiated acquisitions, the contracting officer shall delay award, if necessary, and process the notification of an improper wage determination for the primary site of the work in the manner prescribed for a new wage determination at 22.404-5(c)(3).

[53 FR 4935, Feb. 18, 1988, as amended at 70 FR 33667, June 8, 2005]

**22.404-9 Award of contract without required wage determination.**

(a) If a contract is awarded without the required wage determination (i.e., incorporating no determination, containing a clearly inapplicable general wage determination, or containing a project determination which is inapplicable because of an inaccurate description of the project or its location), the contracting officer shall initiate action to incorporate the required determination in the contract immediately upon discovery of the error. If a required wage determination (valid determination in effect on the date of award) is not available, the contracting officer shall expeditiously request a wage determination from the Department of Labor, including a statement explaining the circumstances and giving the date of the contract award.

(b) The contracting officer shall—

(1) Modify the contract to incorporate the required wage determination (retroactive to the date of award), and equitably adjust the contract price if appropriate; or

(2) Terminate the contract.

**22.404-10 Posting wage determinations and notice.**

The contractor must keep a copy of the applicable wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where the workers can easily see it. The contracting officer shall furnish to the contractor, Department of Labor Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects, for posting with the wage rates. The name, address, and telephone number of the Government officer responsible for the administration of the contract shall be indicated in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53481, Oct. 22, 2001]

**22.404-11 Wage determination appeals.**

The Secretary of Labor has established an Administrative Review Board which decides appeals of final decisions made by the Department of Labor concerning Construction Wage Rate Requirements statute wage determinations. A contracting agency or other interested party may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by the Administrator has been sought pursuant to 29 CFR 1.8 and denied.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53481, Oct. 22, 2001; 79 FR 24204, Apr. 29, 2014]

**22.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.**

(a) Each time the contracting officer exercises an option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work, the contracting officer must modify the contract to incorporate the most current wage determination.

(b) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the con-

tracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The wage determination will be effective for the complete period of performance of those task orders without further revision.

(c) The contracting officer must include in fixed-price contracts a clause that specifies one of the following methods, suitable to the interest of the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an option to extend the term of the contract:

(1) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(2) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (*e.g.*, the U.S. Army Computer-Aided Cost Estimating System or similar commercial product), which is multiplied in the contract by a factor proposed by the contractor (*e.g.*, .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed

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to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(3) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Construction Wage Rate Requirements statute. The contracting officer must insert 50 percent as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Labor Standards statute and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

[66 FR 53481, Oct. 22, 2001, as amended at 72 FR 63089, Nov. 7, 2007; 79 FR 24204, Apr. 29, 2014]

### 22.405 [Reserved]

### 22.406 Administration and enforcement.

#### 22.406-1 Policy.

(a) *General.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies shall maintain an effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

#### 22.406-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions,

compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 52.222-6, Construction Wage Rate Requirements, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with an hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or pro-

posed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (i.e., 1½ times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

[53 FR 4935, Feb. 18, 1988, as amended at 79 FR 24204, Apr. 29, 2014]

#### 22.406-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at 52.222-6, Construction Wage Rate Requirements, shall require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this section are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional

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classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of SF 1444) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer shall submit a report (including a copy of SF 1444) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 52.222-6 and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

[53 FR 4935, Feb. 18, 1988, as amended at 57 FR 44263, Sept. 24, 1992; 59 FR 67038, Dec. 28, 1994; 66 FR 53481, Oct. 22, 2001; 79 FR 24204, Apr. 29, 2014]

### 22.406-4 Apprentices and trainees.

(a) The contracting officer shall review the contractor's employment and

payment records of apprentices and trainees made available pursuant to the clause at 52.222-8, Payrolls and Basic Records, to ensure that the contractor has complied with the clause at 52.222-9, Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices or trainees without complying with the requirements of the clause at 52.222-9, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

### 22.406-5 Subcontracts.

In accordance with the requirements of the clause at 52.222-11, Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

### 22.406-6 Payrolls and statements.

(a) *Submission.* In accordance with the clause at 52.222-8, Payrolls and Basic Records, the contractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission.* If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) *Examination.* (1) The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

- (i) The correctness of classifications and rates;
- (ii) Fringe benefits payments;
- (iii) Hours worked;
- (iv) Deductions; and
- (v) Disproportionate employment ratios of laborers, apprentices, or trainees, to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reasons, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information 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 subpart as may be necessary to ensure compliance with the labor standards requirement of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following 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 classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance 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.* Situations that may require special compliance 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 specific enough, the complainant shall be so advised and invited to submit additional information.

#### 22.406-8 Investigations.

Conduct labor standards investigations when available information indicates such action is warranted. In addition, 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 compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(1) The investigation must—

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' 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 Administrator, Wage and Hour Division, to obtain—

(i) Investigation and enforcement instructions; or

(ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of back wages due, to anyone other than Government contract administrators.

(b) *Investigation report.* The contracting officer must review the investigation 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 investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of non-compliance.

(c) *Contractor notification.* After completing the review, the contracting officer must—

(1) Provide the contractor any written preliminary findings and proposed 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 con-

tracting 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 Construction Wage Rate Requirements statute);

(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 statute;

(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 dis-close—

(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 Construction Wage Rate Requirements statute); or

(3) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards statute.

(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, as amended at 79 FR 24204, Apr. 29, 2014]

**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 statute. (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 Construction Wage Rate Requirements statute or Contract Work Hours and Safety Standards statute 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 Construction Wage Rate Requirements statute 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 Secretary of Labor.* Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must follow the Department of Labor guidance published in Wage and Hour Division, All Agency Memorandum (AAM) No. 215, Streamlining Claims for Federal Contractor Employees Act. The AAM No. 215 can be obtained at <http://www.dol.gov/whd/govcontracts/dbra.htm>; under Guidance there is a link for All Agencies Memoranda (AAMs).

(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 returning funds.* If the Department of Labor requested the withholding or if the findings are disputed (see 22.406-10(e)), the contracting officer must not return the funds 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; 79 FR 24204, Apr. 29, 2014; 79 FR 70343, Nov. 25, 2014]

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

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

- (1) Misclassification of workers;
- (2) Hours of work;
- (3) Wage rates and payment;
- (4) Payment of overtime;
- (5) Withholding practices; and
- (6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from the Department of Labor.

(c) When requesting the contractor to take corrective action in labor violation cases, the contracting officer shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are handled under the contract clause at 52.222-14, Disputes Concerning Labor Standards, and not under the clause at 52.233-1, Disputes.

(2) The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.

(d) The contracting officer shall promptly transmit the contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division.

(e) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR part 6, and hearings before the Labor Department Administrative Review Board are conducted in accordance with 29 CFR part 7.

(f) The Administrator, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the Administrator finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards statute or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Construction Wage Rate Requirements statute, or has committed violations of the Construction Wage Rate Requirements statute that constitute a disregard of its obligations to employees or subcontractors under 40 U.S.C. 3144.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53481, Oct. 22, 2001; 79 FR 24204, Apr. 29, 2014]

**22.406-11 Contract terminations.**

If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division. The report shall include—

- (a) The number of the terminated contract;
- (b) The name and address of the terminated contractor or subcontractor;
- (c) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (d) The amount and number of the replacement contract, if any; and

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(e) A description of the work.

[48 FR 42258, Sept. 19, 1983, as amended at 79 FR 70343, Nov. 25, 2014]

### 22.406-12 Cooperation with the Department of Labor.

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Construction Wage Rate Requirements statute, the Contract Work Hours and Safety Standards statute, or the Copeland (Anti-Kickback) Act.

[53 FR 4935, Feb. 18, 1988, as amended at 79 FR 24204, Apr. 29, 2014]

### 22.406-13 Semiannual enforcement reports.

A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Construction Wage Rate Requirements statute and Contract Work Hours and Safety Standards statute is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall only contain information as to the enforcement actions of the contracting agency and shall be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

[79 FR 24204, Apr. 29, 2014]

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### 22.407 Solicitation provision and contract clauses.

(a) Insert the following clauses in solicitations and contracts in excess of \$2,000 for construction within the United States:

(1) 52.222-6, Construction Wage Rate Requirements.

(2) 52.222-7, Withholding of Funds.

(3) 52.222-8, Payrolls and Basic Records.

(4) 52.222-9, Apprentices and Trainees.

(5) 52.222-10, Compliance with Copeland Act Requirements.

(6) 52.222-11, Subcontracts (Labor Standards).

(7) 52.222-12, Contract Termination—Debarment.

(8) 52.222-13, Compliance with Construction Wage Rate Requirements and Related Regulations.

(9) 52.222-14, Disputes Concerning Labor Standards.

(10) 52.222-15, Certification of Eligibility.

(b) Insert the clause at 52.222-16, Approval of Wage Rates, in solicitations and contracts in excess of \$2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.

(c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under 22.402(b) the requirements of this subpart apply to the construction work, insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.

(d) [Reserved]

(e) Insert the clause at 52.222-30, Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Pricing Method), in solicitations and contracts if the contract is expected to be—

(1) A fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option

provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(1) or (2); or

(2) A cost-reimbursable type contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract.

(f) Insert the clause at 52.222-31, Construction Wage Rate Requirements—Price Adjustment (Percentage Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(3).

(g) Insert the clause at 52.222-32, Construction Wage Rate Requirements—Price Adjustment (Actual Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate method to establish contract price is the method at 22.404-12(c)(4).

(h) Insert the provision at 52.222-5, Construction Wage Rate Requirements—Secondary Site of the Work, in solicitations in excess of \$2,000 for construction within the United States.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53481, Oct. 22, 2001; 70 FR 33667, June 8, 2005; 72 FR 27384, May 15, 2007; 79 FR 24205, Apr. 29, 2014]

### Subpart 22.5—Use of Project Labor Agreements for Federal Construction Projects

SOURCE: 75 FR 19178, Apr. 13, 2010, unless otherwise noted.

#### 22.501 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, dated February 4, 2022 (3 CFR, 2023 Comp., pp 335-338).

[88 FR 88727, Dec. 22, 2023]

#### 22.502 Definitions.

As used in this subpart—

*Construction* means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

*Labor organization* means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members.

*Large-scale construction project* means a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is \$35 million or more.

*Project labor agreement* means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

[75 FR 19178, Apr. 13, 2010, as amended at 88 FR 88727, Dec. 22, 2023]

#### 22.503 Policy.

(a) Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects, requires agencies to use project labor agreements in large-scale construction projects to promote economy and efficiency in the administration and completion of Federal construction projects.

(b) When awarding a contract in connection with a large-scale construction project (see 22.502), agencies shall require use of project labor agreements for contractors and subcontractors engaged in construction on the project, unless an exception at 22.504(d) applies.

(c) An agency may require the use of a project labor agreement on projects where the total cost to the Federal Government is less than that for a

large-scale construction project, if appropriate.

(1) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(i) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(ii) Be consistent with law.

(2) Agencies may consider the following factors in deciding whether the use of a project labor agreement is appropriate for a construction project where the total cost to the Federal Government is less than that for a large-scale construction project:

(i) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(ii) There is a shortage of skilled labor in the region in which the construction project will be sited.

(iii) Completion of the project will require an extended period of time.

(iv) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(v) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

(vi) Any other factors that the agency decides are appropriate.

(d) For indefinite-delivery indefinite-quantity (IDIQ) contracts the use of a project labor agreement may be required on an order-by-order basis rather than for the entire contract. For an order at or above \$35 million an agency shall require the use of a project labor agreement unless an exception applies. See 22.504(d)(3) and 22.505(b)(3).

[88 FR 88727, Dec. 22, 2023]

#### 22.504 General requirements for project labor agreements.

(a) *General.* Project labor agreements established under this subpart shall fully conform to all statutes, regulations, and Executive orders.

(b) *Requirements.* A project labor agreement shall—

(1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Include any additional requirements as the agency deems necessary to satisfy its needs.

(c) *Labor organizations.* An agency may not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

(d) *Exceptions to project labor agreement requirements—*(1) *Exception.* The senior procurement executive may grant an exception from the requirements at 22.503(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

(2) *Considerations.* When determining whether the exception in paragraph (d)(1)(ii) of this section applies, contracting officers shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement (*e.g.*, costs of labor or materials, supply chain costs). Agencies may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.

(3) *Timing of the exception*—(i) *Contracts other than IDIQ contracts.* The exception must be granted for a particular contract by the solicitation date.

(ii) *IDIQ contracts.* An exception shall be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions shall be granted for each order by the time of the notice of the intent to place an order (*e.g.*, 16.505(b)(1)).

[75 FR 19178, Apr. 13, 2010, as amended at 88 FR 88727, Dec. 22, 2023]

#### **22.505 Solicitation provision and contract clause.**

When a project labor agreement is used for a construction project, the contracting officer shall—

(a)(1) Insert the provision at 52.222-33, Notice of Requirement for Project Labor Agreement, in solicitations containing the clause 52.222-34, Project Labor Agreement.

(2) Use the provision with its Alternate I if the agency will require the submission of a project labor agreement from only the apparent successful offeror, prior to contract award.

(3) Use the provision with its Alternate II if an agency allows submission of a project labor agreement after contract award except when Alternate III is used.

(4) Use the provision with its Alternate III when Alternate II of 52.222-34 is used.

(b)(1) Insert the clause at 52.222-34, Project Labor Agreement, in solicitations and contracts associated with the construction project.

(2) Use the clause with its Alternate I if an agency allows submission of the project labor agreement after contract award except when Alternate II is used.

(3) Use the clause with its Alternate II in IDIQ contracts when the agency will have project labor agreements negotiated on an order-by-order basis and anticipates one or more orders may not use a project labor agreement.

[88 FR 88728, Dec. 22, 2023]

### **Subpart 22.6—Contracts for Materials, Supplies, Articles, and Equipment**

#### **22.601 [Reserved]**

#### **22.602 Statutory requirements.**

Except for the exemptions at 22.604, all contracts subject to 41 U.S.C. chapter 65 (the statute), and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles,

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and equipment (referred to in this subpart as supplies) in any amount exceeding \$15,000, shall include or incorporate by reference the stipulations required by the statute pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

[79 FR 24205, Apr. 29, 2014, as amended at 85 FR 27091, May 6, 2020]

### 22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that—

(a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;

(b) Exceed or may exceed \$15,000; and

(c) Are not exempt under 22.604.

[68 FR 28082, May 22, 2003, as amended at 75 FR 53133, Aug. 30, 2010]

### 22.604 Exemptions.

#### 22.604–1 Statutory exemptions.

Contracts for acquisition of the following supplies are exempt from the statute:

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase “in the open market” generally (such as commercial products and commercial services, see part 12); or where a specific purchase is made under the conditions described in 6.302–2 in circumstances where immediate delivery is required by the public exigency.

(b) Perishables, including dairy, live-stock, and nursery products.

(c) Agricultural or farm products processed for first sale by the original producers.

(d) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

[48 FR 42258, Sept. 19, 1983, as amended at 53 FR 4944, Feb. 18, 1988; 60 FR 48248, Sept. 18, 1995; 79 FR 24205, Apr. 29, 2014; 86 FR 61028, Nov. 4, 2021]

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### 22.604–2 Regulatory exemptions.

(a) Contracts for the following acquisitions are fully exempt from the statute (see 41 CFR 50–201.603):

(1) Public utility services.

(2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.

(3) Purchases against the account of a defaulting contractor where the stipulations of the statute were not included in the defaulted contract.

(4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b)(1) Upon the request of the agency head, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act’s stipulations; *provided*, that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. All other requests shall be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

[48 FR 42258, Sept. 19, 1983, as amended at 61 FR 67410, Dec. 20, 1996; 68 FR 28082, May 22, 2003; 79 FR 24205, Apr. 29, 2014]

### 22.605 Rulings and interpretations of the statute.

(a) As authorized by the statute, the Secretary of Labor has issued rulings and interpretations concerning the administration of the statute (see 41 CFR 50–206). The substance of certain rulings and interpretations is as follows:

(1) If a contract for \$15,000 or less is subsequently modified to exceed \$15,000, the contract becomes subject to the statute for work performed after the date of the modification.

(2) If a contract for more than \$15,000 is subsequently modified by mutual agreement to \$15,000 or less, the contract is not subject to the statute for

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work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the statute in contracts in excess of \$15,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.

(4) If a contract subject to the statute is awarded to a contractor operating Government-owned facilities, the stipulations of the statute affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the statute unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$15,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) [Reserved]

[48 FR 42258, Sept. 19, 1983, as amended at 75 FR 53133, Aug. 30, 2010; 79 FR 24205, Apr. 29, 2014]

### 22.606–22.607 [Reserved]

#### 22.608 Procedures.

(a) *Award*. When a contract subject to the statute is awarded, the contracting officer, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, shall furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation*. In the event of a violation of a stipulation required under the statute, the contracting officer shall, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 29 CFR part 1, Ap-

pendix B), and furnish any information available.

[61 FR 67411, Dec. 20, 1996, as amended at 71 FR 36932, June 28, 2006; 79 FR 24205, Apr. 29, 2014]

### 22.609 [Reserved]

#### 22.610 Contract clause.

The contracting officer shall insert the clause at 52.222–20, Contracts for Materials, Supplies, Articles, and Equipment, in solicitations and contracts covered by the statute (see 22.603, 22.604, and 22.605).

[79 FR 24205, Apr. 29, 2014, as amended at 85 FR 27091, May 6, 2020]

## Subpart 22.7 [Reserved]

### Subpart 22.8—Equal Employment Opportunity

#### 22.800 Scope of subpart.

This subpart prescribes policies and procedures pertaining to non-discrimination in employment by contractors and subcontractors.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70283, Dec. 18, 1998]

#### 22.801 Definitions.

As used in this subpart—

*Affirmative action program* means a contractor's program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

*Compliance evaluation* means any one or combination of actions that the Office of Federal Contract Compliance Programs (OFCCP) may take to examine a Federal contractor's compliance with one or more of the requirements of E.O. 11246.

*Contractor* includes the terms “prime contractor” and “subcontractor.”

*Deputy Assistant Secretary* means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

*Equal Opportunity clause* means the clause at 52.222–26, Equal Opportunity, as prescribed in 22.810(e).

*E.O. 11246* means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive order amending or superseding this

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order (see 22.802). This term specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to E.O. 11246 by the Secretary of Labor or a designee.

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Prime contractor* means any person who holds, or has held, a Government contract subject to E.O. 11246.

*Recruiting and training agency* means any person who refers workers to any contractor or provides or supervises apprenticeship or training for employment by any contractor.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Site of construction* means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

*Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee)—

(1) For the purchase, sale, or use of personal property or nonpersonal services that, in whole or in part, are necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

*Subcontractor* means any person who holds, or has held, a subcontract subject to E.O. 11246. The term *first-tier subcontractor* means a subcontractor holding a subcontract with a prime contractor.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American

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Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

[63 FR 70283, Dec. 18, 1998, as amended at 68 FR 28082, May 22, 2003; 80 FR 19507, Apr. 10, 2015]

### 22.802 General.

(a) Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that all agencies—

(1) Include this clause in all non-exempt contracts and subcontracts (see 22.807); and

(2) Act to ensure compliance with the clause and the regulations of the Secretary of Labor—

(i) To promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, sexual orientation, gender identity, or national origin; and

(ii) To prohibit contractors from discharging, or in any other manner discriminating against, any employee or applicant for employment because the employee or applicant inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(b) No contract or modification involving new acquisition shall be entered into, and no subcontract shall be approved by a contracting officer, with a person who has been found ineligible by the Deputy Assistant Secretary for reasons of noncompliance with the requirements of E.O. 11246.

(c) No contracting officer or contractor shall contract for supplies or services in a manner so as to avoid applicability of the requirements of E.O. 11246.

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(d) Contractor disputes related to compliance with its obligation shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR 60–1.1).

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70283, 70285, Dec. 18, 1998; 80 FR 19507, Apr. 10, 2015; 81 FR 67734, Sept. 30, 2016]

### 22.803 Responsibilities.

(a) The Secretary of Labor is responsible for the—

(1) Administration and enforcement of prescribed parts of E.O. 11246; and

(2) Adoption of rules and regulations and the issuance of orders necessary to achieve the purposes of E.O. 11246.

(b) The Secretary of Labor has delegated authority and assigned responsibility to the Deputy Assistant Secretary for carrying out the responsibilities assigned to the Secretary by E.O. 11246, except for the issuance of rules and regulations of a general nature.

(c) The head of each agency is responsible for ensuring that the requirements of this subpart are carried out within the agency, and for cooperating with and assisting the OFCCP in fulfilling its responsibilities.

(d) In the event the applicability of E.O. 11246 and implementing regulations is questioned, the contracting officer shall forward the matter to the Deputy Assistant Secretary, through agency channels, for resolution.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70283, 70285, Dec. 18, 1998]

### 22.804 Affirmative action programs.

#### 22.804–1 Nonconstruction.

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and either a contract or subcontract of \$50,000 or more, or Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. Each contractor and subcontractor shall develop its written affirmative action programs within 120 days from the commencement of its

first such Government contract, subcontract, or Government bill of lading.

[63 FR 70284, Dec. 18, 1998]

#### 22.804–2 Construction.

(a) Construction contractors that hold a nonexempt (see 22.807) Government construction contract are required to meet (1) the contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects and (2) applicable requirements of 41 CFR 60–1 and 60–4.

(b) Each agency shall maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered construction trades. Information concerning, and additions to, this listing will be provided to the principally affected contracting officers in accordance with agency procedures. Any contracting officer contemplating a construction project in excess of \$10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the contracting officer shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70284, Dec. 18, 1998]

### 22.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of \$10 million or more*

(*excluding construction*). (1) Except as provided in paragraphs (a)(4) and (a)(8) of this section, if the estimated amount of the contract or subcontract is \$10 million or more, the contracting officer shall request clearance from the appropriate OFCCP regional office before—

(i) Award of any contract, including any indefinite delivery contract or letter contract; or

(ii) Modification of an existing contract for new effort that would constitute a contract award.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$10 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed by letter or facsimile transmission.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward clearance to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward clearance request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer does not need to request a preaward clearance if—

(i) The specific proposed contractor is listed in OFCCP's National Preaward Registry via the Internet at <https://www.dol.gov/agencies/ofccp/pre-award/registry>

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The contracting officer documents the Registry review in the contract file.

(5) The contracting officer shall include the following information in the preaward clearance request:

(i) Name, address, and telephone number of the prospective contractor and of any corporate affiliate at which work is to be performed.

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at \$10 million or more.

(iii) Anticipated date of award.

(iv) Information as to whether the contractor and first-tier subcontractors have previously held any Government contracts or subcontracts.

(v) Place or places of performance of the prime contract and first-tier subcontracts estimated at \$10 million or more, if known.

(vi) The estimated dollar amount of the contract and each first-tier subcontract, if known.

(6) The contracting officer shall allow as much time as feasible before award for the conduct of necessary compliance evaluation by OFCCP. As soon as the apparently successful offeror can be determined, the contracting officer shall process a preaward clearance request in accordance with agency procedures, assuring, if possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 days before the proposed award date.

(7) Within 15 days of the clearance request, OFCCP will inform the awarding agency of its intention to conduct a preaward compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance shall be presumed and the awarding agency is authorized to proceed with the award.

(8) If the procedures specified in paragraphs (a)(6) and (a)(7) of this section would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the

time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward evaluation from the OFCCP regional office.

(9) If, under the provisions of paragraph (a)(8) of this section, a postaward evaluation determines the contractor to be in noncompliance with E.O. 11246, the Deputy Assistant Secretary may authorize the use of the enforcement procedures at 22.809 against the non-complying contractor.

(b) *Furnishing posters.* The contracting officer shall furnish to the contractor appropriate quantities of the poster entitled *Equal Employment Opportunity Is The Law*. These shall be obtained in accordance with agency procedures.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70284, Dec. 18, 1998; 81 FR 67781, Sept. 30, 2016; 86 FR 31074, June 12, 2021]

#### **22.806 Inquiries.**

(a) An inquiry from a contractor regarding status of its compliance with E.O. 11246, or rights of appeal to any of the actions in 22.809, shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with E.O. 11246 shall be referred to the Deputy Assistant Secretary.

[63 FR 70284, Dec. 18, 1998]

#### **22.807 Exemptions.**

(a) Under the following exemptions, all or part of the requirements of E.O. 11246 may be excluded from a contract subject to E.O. 11246:

(1) *National security.* The agency head may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security. Upon making such a determination, the agency shall notify the Deputy Assistant Secretary in writing within 30 days.

(2) *Specific contracts.* The Deputy Assistant Secretary may exempt an agency from requiring the inclusion of one or more of the requirements of E.O. 11246 in any contract if the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Deputy Assistant Secretary finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O. 11246.

(b) The following exemptions apply even though a contract or subcontract contains the Equal Opportunity clause:

(1) *Transactions of \$10,000 or less.* The Equal Opportunity clause is required to be included in prime contracts and subcontracts by 22.802(a). Individual prime contracts or subcontracts of \$10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all prime contracts or subcontracts awarded to a contractor in any 12-month period exceeds, or can reasonably be expected to exceed, \$10,000. (Note: Government bills of lading, regardless of amount, are not exempt.)

(2) *Work outside the United States.* Contracts are exempt from the requirements of E.O. 11246 for work performed outside the United States by employees who were not recruited within the United States.

(3) *Contracts with State or local governments.* The requirements of E.O. 11246 in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the contract.

(4) *Work on or near Indian reservations.* It shall not be a violation of E.O. 11246

for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, sexual orientation, gender identity, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with E.O. 11246, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts.* The Deputy Assistant Secretary may exempt from the requirements of E.O. 11246 any of a contractor's facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Deputy Assistant Secretary also finds that the exemption will not interfere with, or impede the effectiveness of, E.O. 11246.

(6) *Indefinite-quantity contracts.* With respect to indefinite-quantity contracts and subcontracts, the Equal Opportunity clause applies unless the contracting officer has reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the Equal Opportunity clause shall be applied to the contract whenever the amount of a single order exceeds \$10,000. Once the Equal Opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(7) *Contracts with religious entities.* Pursuant to E.O. 13279, Section 202 of E.O. 11246, shall not apply to a Government contractor or subcontractor that is a religious corporation, association,

educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in the order.

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Deputy Assistant Secretary for approval.

(d) The Deputy Assistant Secretary may withdraw the exemption for a specific contract, or group of contracts, if the Deputy Assistant Secretary deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply—

(1) To contracts awarded before the withdrawal; or

(2) To any sealed bid contract (including restricted sealed bidding), unless the withdrawal is made more than 10 days before the bid opening date.

[48 FR 42258, Sept. 19, 1983, as amended at 52 FR 19803, May 27, 1987; 63 FR 70284, 70285, Dec. 18, 1998; 72 FR 13588, Mar. 22, 2007; 80 FR 19507, Apr. 10, 2015]

## 22.808 Complaints.

Complaints received by the contracting officer alleging violation of the requirements of E.O. 11246 shall be referred immediately to the OFCCP regional office. The complainant shall be advised in writing of the referral. The contractor that is the subject of a complaint shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70285, Dec. 18, 1998]

## 22.809 Enforcement.

Upon written notification to the contracting officer, the Deputy Assistant

## Federal Acquisition Regulation

22.901

Secretary may direct one or more of the following actions, as well as administrative sanctions and penalties, be taken against contractors found to be in violation of E.O. 11246, the regulations of the Secretary of Labor, or the applicable contract clauses:

(a) Publication of the names of the contractor or its unions.

(b) Cancellation, termination, or suspension of the contractor's contracts or portion thereof.

(c) Debarment from future Government contracts, or extensions or modifications of existing contracts, until the contractor has established and carried out personnel and employment policies in compliance with E.O. 11246 and the regulations of the Secretary of Labor.

(d) Referral by the Deputy Assistant Secretary of any matter arising under E.O. 11246 to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70285, Dec. 18, 1998; 81 FR 67734, Sept. 30, 2016]

### 22.810 Solicitation provisions and contract clauses.

(a) When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the contracting officer shall insert—

(1) The clause at 52.222-21, Prohibition of Segregated Facilities, in the solicitation and contract; and

(2) The provision at 52.222-22, Previous Contracts and Compliance Reports, in the solicitation.

(b) The contracting officer shall insert the provision at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction, in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of \$10,000.

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation, in solicitations other than those for construction when a contract is contemplated that

will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be \$10 million or more.

(d) The contracting officer shall insert the provision at 52.222-25, Affirmative Action Compliance, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity.

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all of the requirements of E.O. 11246 (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of E.O. 11246, the contracting officer shall use the clause with its *Alternate 1*.

(f) The contracting officer shall insert the clause at 52.222-27, Affirmative Action Compliance Requirements for Construction, in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, when the amount of the contract is expected to be in excess of \$10,000.

(g) The contracting officer shall insert the clause at 52.222-29, Notification of Visa Denial, in contracts that will include the clause at 52.222-26, Equal Opportunity, if the contractor is required to perform in or on behalf of a foreign country.

[48 FR 42258, Sept. 19, 1983, as amended at 50 FR 23606, June 4, 1985; 52 FR 19803, May 27, 1987; 63 FR 34060, June 22, 1998; 63 FR 70285, Dec. 18, 1998]

## Subpart 22.9—Nondiscrimination Because of Age

### 22.901 Policy.

Executive Order 11141, February 12, 1964 (29 FR 2477), states that the Government policy is as follows:

(a) Contractors and subcontractors shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, shall not specify in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(c) Agencies will bring this policy to the attention of contractors. The use of contract clauses is not required.

#### **22.902 Handling complaints.**

Agencies shall bring complaints regarding a contractor's compliance with this policy to that contractor's attention (in writing, if appropriate), stating the policy, indicating that the contractor's compliance has been questioned, and requesting that the contractor take any appropriate steps that may be necessary to comply.

### **Subpart 22.10— Service Contract Labor Standards**

SOURCE: 54 FR 19816, May 8, 1989, unless otherwise noted.

#### **22.1000 Scope of subpart.**

This subpart prescribes policies and procedures implementing the provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards (formerly known as the Service Contract Act of 1965), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*), and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).

[79 FR 24205, Apr. 29, 2014]

#### **22.1001 Definitions.**

As used in this subpart—

*Contractor* includes a subcontractor at any tier whose subcontract is subject to the provisions of the statute.

*Multiple year contracts* means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multi-year contracts (see 17.103).

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American

Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession within a foreign country (29 CFR 4.112).

*Wage and Hour Division* means the unit in the Department of Labor to which is assigned functions of the Secretary of Labor under the Service Contract Labor Standards statute.

*Wage determination* means a determination of minimum wages or fringe benefits made under 41 U.S.C. 6703 or 6707(c) applicable to the employment in a given locality of one or more classes of service employees.

[54 FR 19816, May 8, 1989, as amended at 61 FR 39207, July 26, 1996; 66 FR 2130, Jan. 10, 2001; 68 FR 28082, May 22, 2003; 71 FR 36932, June 28, 2006; 77 FR 75776, Dec. 21, 2012; 79 FR 24205, Apr. 29, 2014; 79 FR 74550, Dec. 15, 2014; 83 FR 42573, Aug. 22, 2018]

#### **22.1002 Statutory and Executive order requirements.**

##### **22.1002–1 General.**

Service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under 41 U.S.C. 6707(d), service contracts may not exceed 5 years.

[54 FR 19816, May 8, 1989, as amended at 79 FR 24205, Apr. 29, 2014]

##### **22.1002–2 Wage determinations based on prevailing rates.**

Contractors performing on service contracts in excess of \$2,500 to which no predecessor contractor's collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act.

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## 22.1003-2

### **22.1002-3 Wage determinations based on collective bargaining agreements.**

(a) Successor contractors performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor's collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines (1) after a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality or (2) that the wages and fringe benefits are not the result of arm's length negotiations.

(b) Paragraphs in this Subpart 22.10 which deal with this statutory requirement and the Department of Labor's implementing regulations are 22.1010, concerning notification to contractors and bargaining representatives of procurement dates; 22.1012-2, explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and 22.1013 and 22.1021, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

[54 FR 19816, May 8, 1989, as amended at 59 FR 67039, Dec. 28, 1994; 71 FR 36932, June 28, 2006]

### **22.1002-4 Application of the Fair Labor Standards Act minimum wage.**

No contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206).

### **22.1002-5 Executive Orders 13658 and 14026.**

Executive Order (E.O.) 13658 established minimum wages for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.10 statutory wage determination amount.

[87 FR 4121, Jan. 26, 2022]

### **22.1002-6 Executive Order 13706.**

Executive Order 13706 establishes paid sick leave for employees of certain Federal contractors. See subpart 22.21 and the clause at 52.222-62, Paid Sick Leave under Executive Order 13706.

[81 FR 91631, Dec. 16, 2016]

## **22.1003 Applicability.**

### **22.1003-1 General.**

This subpart 22.10 applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted in 22.1003-3 and 22.1003-4 of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

### **22.1003-2 Geographical coverage of the Service Contract Labor Standards statute.**

The Service Contract Labor Standards statute applies to service contracts performed in the United States (see 22.1001). The Service Contract

## 22.1003-3

Labor Standards statute does not apply to contracts performed outside the United States.

[79 FR 24205, Apr. 29, 2014]

### 22.1003-3 Statutory exemptions.

The Service Contract Labor Standards statute does not apply to—

(a) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(b) Any work required to be done in accordance with the provisions of 41 U.S.C. chapter 65;

(c) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(d) Any contract for furnishing services by radio, telephone, or cable companies subject to the Communications Act of 1934;

(e) Any contract for public utility services;

(f) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) Any contract for operating postal contract stations for the U.S. Postal Service.

[54 FR 19816, May 8, 1989, as amended at 79 FR 24206, Apr. 29, 2014; 81 FR 83099, Nov. 18, 2016; 85 FR 27091, May 6, 2020]

### 22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Service Contract Labor Standards statute other than 41 U.S.C. 6707(f). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Service Contract Labor Standards statute to protect prevailing labor standards (41 U.S.C. 6707(b)). See 29 CFR 4.123 for a listing of administrative exemptions,

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tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Service Contract Labor Standards statute shall be submitted in writing through contracting channels and the agency labor advisor to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in 22.1003-3 of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the Service Contract Labor Standards statute:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(c) *Contracts for maintenance, calibration or repair of certain equipment—(1) Exemption.* The Secretary of Labor has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (c)(2) of this subsection are met:

(i) Automated data processing equipment and office information/word processing systems.

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Product or Service Code

(PSC) 6515, "Medical and Surgical Instruments, Equipment, and Supplies;" PSC 6525, "Imaging Equipment and Supplies: Medical, Dental, Veterinary;" PSC 6630, "Chemical Analysis Instruments;" and PSC 6655, "Geophysical Instruments," are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) *Conditions.* The exemption at paragraph (c)(1) of this subsection applies if all the following conditions are met for a contract (or a subcontract):

(i) The items of equipment to be serviced under the contract are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)—

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iii) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing the same equipment of commercial customers.

(iv) The apparent successful offeror certifies to the conditions in paragraph

(c)(2)(i) through (iii) of this subsection. (See 22.1006(e).)

(3) *Affirmative determination and contract award.* (i) For source selections where the contracting officer has established a competitive range, if the contracting officer determines that one or more of the conditions in paragraphs 22.1003-4 (c)(2)(i) through (iii) of an offeror's certification will not be met, the contracting officer shall identify the deficiency to the offeror before receipt of the final proposal revisions. Unless the offeror provides a revised offer acknowledging applicability of the Service Contract Labor Standards statute or demonstrating to the satisfaction of the contracting officer an ability to meet all required conditions for exemption, the offer will not be further considered for award.

(ii) The contracting officer shall determine in writing the applicability of this exemption to the contract before contract award. If the apparent successful offeror will meet all conditions in paragraph (c)(2) of this subsection, the contracting officer shall make an affirmative determination and award the contract without the otherwise applicable Service Contract Labor Standards clause(s).

(iii) If the apparent successful offeror does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this subsection, the contracting officer shall incorporate in the contract the Service Contract Labor Standards clause (see 22.1006(a)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see 22.1007).

(4) *Department of Labor determination.*

(i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this subsection has not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) shall be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (c)(2) of this subsection have not been

met with respect to a subcontract, the exemption shall be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Service Contract Labor Standards statute, effective as of the date of the subcontract award.

(d) *Contracts for certain services*—(1) *Exemption.* Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(2) of this subsection are met:

(i) Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts or subcontracts to operate a Government motor pool or similar facility).

(ii) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which must not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the Construction Wage Rate Requirements statute, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

(v) Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services).

(vi) Real estate services, including real property appraisal services, related to housing Federal agencies or disposing of real property owned by the Government.

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or

military personnel in buying and selling homes (which shall not include actual moving or storage of household goods and related services).

(2) *Conditions.* The exemption for the services in paragraph (d)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i)(A) Except for services identified in paragraph (d)(1)(iv) of this subsection, the contractor will be selected for award based on other factors in addition to price or cost, with the combination of other factors at least as important as price or cost; or

(B) The contract will be awarded on a sole source basis.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)—

(A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iv) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(v) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing commercial customers.

(vi) The contracting officer (or contractor with respect to a subcontract) determines in advance before issuing the solicitation, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the conditions in paragraph (d)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the contracting officer (or contractor with respect to a subcontract) shall consider the practices of the existing contractor in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)(A) The apparent successful offeror certifies that the conditions in paragraphs (d)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(1) In the competitive range, if discussions are to be conducted (see FAR 15.306(c)); or

(2) Considered responsive, if award is to be made without discussions (see FAR 15.306(a)).

(3) *Contract award or resolicitation.* (i) If the apparent successful offeror does not certify to the conditions, the contracting officer shall insert in the contract the applicable Service Contract Labor Standards clause(s) (see 22.1006) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see 22.1007).

(ii) The contracting officer shall award the contract without the otherwise applicable Service Contract Labor Standards clause(s) if—

(A) The apparent successful offeror certifies to the conditions in paragraphs (d)(2)(ii) through (v) of this subsection;

(B) The contracting officer determines that the same certification is

obtained from substantially all other offerors that are—

(1) In the competitive range, if discussions are to be conducted (see FAR 15.306); or

(2) Considered responsive, if award is to be made without discussions (see FAR 15.306(a)); and

(C) The contracting officer has no reason to doubt the certification.

(iii) If the conditions in paragraph (d)(3)(ii) of this subsection are not met, then the contracting officer shall resolicit, amending the solicitation by removing the exemption provision from the solicitation as prescribed at 22.1006(e)(3). The contract will include the applicable Service Contract Labor Standards clause(s) as prescribed at 22.1006 and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see 22.1007).

(4) *Department of Labor determination.*

(i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (d)(2) of this subsection have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) shall be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (d)(2) of this subsection have not been met with respect to a subcontract, the exemption shall be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Service Contract Labor Standards statute, effective as of the date of the subcontract award.

(5) *Exceptions.* The exemption at paragraph (d)(1) of this subsection does not apply to solicitations and contracts (subcontracts)—

(i) Awarded under 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7).

(ii) For the operation of a Government facility, or part of a Government facility (but may be applicable to subcontracts for services); or

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(iii) Subject to 41 U.S.C. 6707(c) (see 22.1002-3).

[54 FR 19816, May 8, 1989, as amended at 61 FR 39198, July 26, 1996; 71 FR 36933, June 28, 2006; 72 FR 63078, Nov. 7, 2007; 74 FR 2729, Jan. 15, 2009; 79 FR 24206, Apr. 29, 2014; 80 FR 38308, July 2, 2015]

### 22.1003-5 Some examples of contracts covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Service Contract Labor Standards statute (see 29 CFR 4.130 for additional examples):

- (a) Motor pool operation, parking, taxicab, and ambulance services.
- (b) Packing, crating, and storage.
- (c) Custodial, janitorial, house-keeping, and guard services.
- (d) Food service and lodging.
- (e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- (f) Snow, trash, and garbage removal.
- (g) Aerial spraying and aerial reconnaissance for fire detection.
- (h) Some support services at installations, including grounds maintenance and landscaping.
- (i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- (j) Electronic equipment maintenance and operation and engineering support services.
- (k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see 22.1003-4(c)(1) and (d)(1)(iv).)
- (l) Operation, maintenance, or logistics support of a Federal facility.
- (m) Data collection, processing and analysis services.

[48 FR 42258, Sept. 19, 1983, as amended at 56 FR 67136, Dec. 27, 1991; 72 FR 63080, Nov. 7, 2007; 74 FR 2729, Jan. 15, 2009; 79 FR 24206, Apr. 29, 2014]

### 22.1003-6 Repair distinguished from remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to 41 U.S.C. chapter

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65 rather than to the Service Contract Labor Standards statute. Remanufacturing shall be deemed to be manufacturing when the criteria in either paragraphs (a)(1) or (2) of this section are met.

(1) Major overhaul of an item, piece of equipment, or materiel which is degraded or inoperable, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down into individual component parts.
- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- (iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- (v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.
- (vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.
- (vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down.
- (ii) Outmoded parts are replaced.
- (iii) The item or equipment is rebuilt or reassembled.
- (iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.
- (v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild

as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Labor Standards statute. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see 22.1003-4(c)(1) and (d)(1)(iv)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

[48 FR 42258, Sept. 19, 1983, as amended at 72 FR 63080, Nov. 7, 2007; 74 FR 2729, Jan. 15, 2009; 79 FR 24206, Apr. 29, 2014; 85 FR 27091, May 6, 2020]

#### **22.1003-7 Questions concerning applicability of the Service Contract Labor Standards statute.**

If the contracting officer questions the applicability of the Service Contract Labor Standards statute to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

[54 FR 19816, May 8, 1989, as amended at 79 FR 24206, Apr. 29, 2014]

#### **22.1004 Department of Labor responsibilities and regulations.**

Under the Service Contract Labor Standards statute, the Secretary of Labor is authorized and directed to enforce the provisions of the Service Contract Labor Standards statute, make

rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

(a) Service contract labor standards provisions and procedures (29 CFR part 4, subpart A);

(b) Wage determination procedures (29 CFR part 4, subparts A and B);

(c) Application of the Service Contract Labor Standards statute (rulings and interpretations) (29 CFR part 4, subpart C);

(d) Compensation standards (29 CFR part 4, subpart D);

(e) Enforcement (29 CFR part 4, subpart E);

(f) Safe and sanitary working conditions (29 CFR part 1925);

(g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR part 6); and

(h) Practice before the Administrative Review Board (29 CFR part 8).

[54 FR 19816, May 8, 1989, as amended at 71 FR 36933, June 28, 2006; 72 FR 63080, Nov. 7, 2007; 79 FR 24206, Apr. 29, 2014]

#### **22.1005 [Reserved]**

#### **22.1006 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at 52.222-41, Service Contract Labor Standards, in solicitations and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Service Contract Labor Standards statute and is—

(i) Over \$2,500; or

(ii) For an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.

(2) The contracting officer shall not insert the clause at 52.222-41 (or any of the associated Service Contract Labor Standards statute clauses as prescribed in this section for possible use when 52.222-41 applies) in the resultant contract if—

(i) The solicitation includes the provision at—

(A) 52.222-48, Exemption from Application of the Service Contract Labor

Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification;

(B) 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification; or

(C) Either of the comparable certifications is checked as applicable in the provision at 52.204-8(c)(2) or 52.212-3(k); and

(ii) The contracting officer has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection 22.1003-4, that the Service Contract Labor Standards statute does not apply to the contract. (In such case, insert the clause at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Service Contract Labor Standards statute is applicable. (See 22.1016.)

(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at 52.222-41, Service Contract Labor Standards, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), applies to both con-

tracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (d) (1), (2) and (3)), or 52.222-44 (subparagraphs (b) (1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at 52.222-41, Service Contract Labor Standards, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment

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under, the clauses prescribed in this paragraph 22.1006(c).

(d) [Reserved]

(e)(1) The contracting officer shall insert the provision at 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification, in solicitations that—

(i) Include the clause at 52.222-41, Service Contract Labor Standards; and

(ii) The contract may be exempt from the Service Contract Labor Standards statute in accordance with 22.1003-4(c).

(2) The contracting officer shall insert the clause at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements—

(i) In solicitations that include the provision at 52.222-48, or the comparable provision is checked as applicable in the clause at 52.204-8(c)(2) or 52.212-3(k)(1); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with 22.1003-4(c)(3), that the Service Contract Labor Standards statute does not apply.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, the contracting officer shall insert the provision at 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification, in solicitations that—

(A) Include the clause at 52.222-41, Service Contract Labor Standards, and

(B) The contract may be exempt from the Service Contract Labor Standards statute in accordance with 22.1003-4(d).

(ii) When resoliciting in accordance with 22.1003-4(d)(3)(iii), amend the solicitation by removing the provision at 52.222-52 from the solicitation.

(4) The contracting officer shall insert the clause at 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at 52.222-52, or the comparable provision is checked as applicable in 52.204-8(c)(2) or 52.212-3(k)(2); and

(ii) In resulting contracts in which the contracting officer has determined,

in accordance with 22.1003-4(d)(3), that the Service Contract Labor Standards statute does not apply.

(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Labor Standards—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.

[54 FR 19816, May 8, 1989, as amended at 60 FR 34758, July 3, 1995; 61 FR 41470, Aug. 8, 1996; 71 FR 36933, June 28, 2006; 71 FR 67779, Nov. 22, 2006; 72 FR 63080, Nov. 7, 2007; 74 FR 2729, Jan. 15, 2009; 74 FR 40461, Aug. 11, 2009; 75 FR 82568, Dec. 30, 2010; 79 FR 24206, Apr. 29, 2014; 79 FR 61751, Oct. 14, 2014; 79 FR 70348, Nov. 25, 2014; 81 FR 11991, Mar. 7, 2016]

### 22.1007 Requirement to obtain wage determinations.

The contracting officer shall obtain wage determinations for the following service contracts:

(a) Each new solicitation and contract in excess of \$2,500.

(b) Each contract modification which brings the contract above \$2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division.

[54 FR 19816, May 8, 1989, as amended at 71 FR 36933, June 28, 2006]

### 22.1008 Procedures for obtaining wage determinations.

[71 FR 36933, June 28, 2006]

#### 22.1008-1 Obtaining wage determinations.

(a) Contracting officers may obtain most prevailing wage determinations using the Wage Determinations at *SAM.gov* website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the Wage Determinations at *SAM.gov*

website, to request a wage determination directly from the Department of Labor. If the Wage Determinations at *SAM.gov* database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the Wage Determinations at *SAM.gov*.

(d) Although the Wage Determinations at *SAM.gov* website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided on the e98. The contracting agency may rely upon the Department of Labor response as the correct wage determination for the contract.

(e) To obtain the applicable wage determination for each contract action, the contracting officer shall determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(1) Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory). The Directory can be found on Wage Determinations at *SAM.gov* Library Page, and is for sale by the Superintendent of Documents, U.S. Government Publishing Office.

(2) Determine the locality where the services will be performed (see 22.1009).

(3) Determine whether 41 U.S.C. 6707(c) applies (see 22.1008-2, 22.1010 and 22.1012-2).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 and/or 5332 (see 22.1016).

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

[71 FR 36933, June 28, 2006, as amended at 79 FR 24207, Apr. 29, 2014; 84 FR 19847, May 6, 2019; 86 FR 71325, Dec. 15, 2021]

**22.1008-2 Successorship with incumbent contractor collective bargaining agreement.**

(a) Early in the acquisition cycle, the contracting officer shall determine whether 41 U.S.C. 6707(c) affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract covered by the Service Contract Labor Standards statute and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) 41 U.S.C. 6707(c) provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of 41 U.S.C. 6707(c) is subject to the following limitations:

(1) 41 U.S.C. 6707(c) will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of 41 U.S.C. 6707(c) under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see 22.1012-2(a)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see 22.1012-2(b)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see 22.1010).

(d)(1) If 41 U.S.C. 6707(c) applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at 52.222-41, Service Contract Labor Standards, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.)

(2) If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the Wage Determinations at *SAM.gov* website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In

using the Wage Determinations at *SAM.gov* process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The contracting officer may also use the e98 process on Wage Determinations at *SAM.gov* to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Service Contract Labor Standards statute to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) 41 U.S.C. 6707(c) will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see 22.1013 and 22.1021). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(2) If the contracting officer's review (see 22.1013) indicates that monetary provisions of the collective bargaining agreement may be substantially at variance or may not have been reached as a result of arm's length bargaining, the contracting officer shall immediately contact the agency labor advisor to consider if further action is warranted.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer

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shall identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall access Wage Determinations at *SAM.gov* to obtain the prevailing wage determination for those service employee classifications that are not covered by the collective bargaining agreement. The contracting officer shall separately list in the solicitation and contract the service employee classifications—(1) subject to the collective bargaining agreement and (2) not subject to any collective bargaining agreement.

[54 FR 19816, May 8, 1989, as amended at 59 FR 67040, Dec. 28, 1994. Redesignated and amended at 71 FR 36933, June 28, 2006; 73 FR 63081, Nov. 7, 2007; 79 FR 24207, Apr. 29, 2014; 86 FR 71325, Dec. 15, 2021]

### **22.1009 Place of performance unknown.**

#### **22.1009-1 General.**

If the place of performance is unknown, the contracting officer may use the procedures in this section. The contracting officer should first attempt to identify the specific places or geographical areas where the services might be performed (see 22.1009-2) and then may follow the procedures either in 22.1009-3 or in 22.1009-4.

#### **22.1009-2 Attempt to identify possible places of performance.**

The contracting officer should attempt to identify the specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

(a) Locations of previous contractors and their competitors.

(b) Databases available via the Internet for lists of prospective offerors and contractors.

(c) Responses to a presolicitation notice (see 5.204).

[48 FR 42258, Sept. 19, 1983, as amended at 68 FR 43856, July 24, 2003]

#### **22.1009-3 All possible places of performance identified.**

(a) If the contracting officer can identify all the possible places or areas

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of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer shall obtain a wage determination for each locality where services may be performed (see 22.1008).

(b) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer shall—

(1) Obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations. If necessary, the contracting officer shall extend the time for submission of final offers; and

(2) Follow the procedures in 22.1009-4.

[71 FR 36934, June 28, 2006]

#### **22.1009-4 All possible places of performance not identified.**

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(a) Include the following information in the synopsis and solicitation:

(1) That the place of performance is unknown.

(2) The possible places or areas of performance that the contracting officer has already identified.

(3) That the contracting officer will obtain wage determinations for additional possible places of performance if asked to do so in writing.

(4) The time and date by which offerors must notify the contracting officer of additional places of performance.

(b) Include the information required by paragraphs (a)(2) and (a)(4) of this section in the clause at 52.222-49, Service Contract Labor Standards-Place of Performance Unknown (see 22.1006(f)). The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

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(c) The procedures in 14.304 shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(d) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

(1) Obtain wage determinations for the additional places of performance; and

(2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(e) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

(1) Award the contract;

(2) Obtain a wage determination; and

(3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222-49, Service Contract Labor Standards-Place of Performance Unknown.

[71 FR 36934, June 28, 2006, as amended at 79 FR 24207, Apr. 29, 2014]

### **22.1010 Notification to interested parties under collective bargaining agreements.**

(a) The contracting officer should determine whether the incumbent prime contractor's or its subcontractors' service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the contracting officer shall give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotia-

tions, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in 22.1012-2 (a) and (b) to apply. The contracting officer shall retain a copy of the notification in the contract file.

[54 FR 19816, May 8, 1989, as amended at 71 FR 36934, June 28, 2006]

### **22.1011 [Reserved]**

### **22.1012 Applicability of revisions to wage determinations.**

[71 FR 36934, June 28, 2006]

### **22.1012-1 Prevailing wage determinations.**

(a)(1) The Wage and Hour Administrator may issue revisions to prevailing wage determinations periodically. The need for inclusion of a revised prevailing wage determination in a solicitation, contract or contract modification (see 22.1007) is determined by the date of receipt of the revised prevailing wage determination by the contracting agency. (Note the distinction between receipt by the agency and receipt by the contracting officer which may occur later.)

(i) For purposes of using Wage Determinations at *SAM.gov*, the time of receipt by the contracting agency shall be the first day of publication of the revised prevailing wage determination on the website.

(ii) For purposes of using the e98 process, the time of receipt by the contracting agency shall be the date the agency receives actual notice of a new or revised prevailing wage determination from the Department of Labor as an e98 response.

(2) In selecting a prevailing wage determination from the Wage Determinations at *SAM.gov* website for use in a solicitation or other contract action, the contracting officer shall monitor the Wage Determinations at *SAM.gov* website to determine whether the applicable wage determination has been revised. Revisions published on the Wage Determinations at *SAM.gov* website or otherwise communicated to the contracting officer within the timeframes prescribed at 22.1012-1(b) and (c) are effective and must be included in the resulting contract. Monitoring can be accomplished by use of the Wage Determinations at *SAM.gov* website's "Alert Service".

(b) The following shall apply when contracting by sealed bidding: a revised prevailing wage determination shall not be effective if it is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding, a revised prevailing wage determination received by the contracting agency after award of a new contract or a modification as specified in 22.1007(b) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) If the contracting officer has submitted an e98 to the Department of Labor requesting a prevailing wage determination and has not received a response within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.)

[71 FR 36934, June 28, 2006, as amended at 86 FR 71325, Dec. 15, 2021]

**22.1012-2 Wage determinations based on collective bargaining agreements.**

(a) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under 41 U.S.C. 6707(c) if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation.

(b) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under 41 U.S.C. 6707(c) if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in 22.1007(b), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under 41 U.S.C. 6707(c).

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely notification required in 22.1010 has been given.

(d) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.) If the Department of Labor is unable to provide the wage determination by the latest date needed

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to maintain the acquisition schedule, the contracting officer shall incorporate the collective bargaining agreement itself in a solicitation or other contract action (*e.g.*, exercise of option) and include a wage determination referencing that collective bargaining agreement created by use of the Wage Determinations at *SAM.gov* website (see 22.1008–2(d)(2)).

[71 FR 36935, June 28, 2006, as amended at 79 FR 24207, Apr. 29, 2014; 86 FR 71325, Dec. 15, 2021]

### 22.1013 Review of wage determination.

(a) *Based on incumbent collective bargaining agreement.* (1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately contact the agency labor advisor to consider instituting the procedures in 22.1021.

(2) If the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the contracting officer shall contact the agency labor advisor to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall ascertain—

(1) If the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the wage determination contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the contracting officer shall contact the agency labor advisor to determine appropriate action.

### 22.1014 Delay over 60 days in bid opening or commencement of work.

If a wage determination was obtained through the e98 process, and bid opening, or commencement of work under a negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted e98, the contracting

officer shall submit a new e98. Any revision of a wage determination received by the contracting agency as a result of that communication shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1012–1(b) and (c).

[71 FR 36935, June 28, 2006]

### 22.1015 Discovery of errors by the Department of Labor.

If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Labor Standards statute did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, shall include in the contract the clause at 52.222–41 and any applicable wage determination issued by the Administrator. If the contract is subject to 41 U.S.C. 6707(f), the Administrator may require retroactive application of that wage determination. The contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

[54 FR 19816, May 8, 1989, as amended at 79 FR 24207, Apr. 29, 2014]

### 22.1016 Statement of equivalent rates for Federal hires.

(a) The statement required under the clause at 52.222–42, Statement of Equivalent Rates for Federal Hires, (see 22.1006(b)) shall set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule—white collar) and/or 5 U.S.C. 5341 (Wage Board—blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory

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service employees and step three for supervisory service employees.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

## 22.1017 [Reserved]

## 22.1018 Notification to contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the contractor of the labor standards requirements of the contract relating to the Service Contract Labor Standards statute and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Service Contract Labor Standards statute and satisfies the notice requirements in paragraph (g) of the clause at 52.222-41, Service Contract Labor Standards.

(c) Attach any applicable wage determination to Publication WH-1313.

[54 FR 19816, May 8, 1989, as amended at 72 FR 63081, Nov. 7, 2007; 79 FR 24207, Apr. 29, 2014]

## 22.1019 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between the unlisted classifications and the classifications

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listed in the determination (see paragraph (c) of the clause at 52.222-41, Service Contract Labor Standards). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate. The contracting officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

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(c) Subminimum rates for apprentices, student learners, and disabled workers are permissible in accordance with paragraph (q) of the clause at 52.222-41, Service Contract Labor Standards.

[54 FR 19816, May 8, 1989, as amended at 72 FR 63081, Nov. 7, 2007; 79 FR 24207, Apr. 29, 2014]

### 22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222-41, Service Contract Labor Standards.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

[54 FR 19816, May 8, 1989, as amended at 72 FR 63081, Nov. 7, 2007; 79 FR 24207, Apr. 29, 2014]

### 22.1021 Requests for hearing.

(a) A contracting agency or other interested party may request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the contracting agency, the contracting officer shall submit a written request through appropriate channels (ordinarily the agency labor advisor) to: Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) A request for a substantial variance hearing shall include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include—

(1) The number of the wage determinations at issue;

(2) The name of the contracting agency whose contract is involved;

(3) A brief description of the services to be performed under the contract;

(4) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;

(5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;

(6) Names and addresses (to the extent known) of interested parties; and

(7) Any other data required by the Administrator.

(c) A request for an arm's length hearing shall include—

(1) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;

(2) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and

(3) Names and addresses (to the extent known) of interested parties.

(d) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:

(1) For sealed bid contracts, more than 10 days before the award of the contract; or

(2) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

[59 FR 67041, Dec. 28, 1994, as amended at 83 FR 42573, Aug. 22, 2018]

### 22.1022 Withholding of contract payments.

Any violations of the clause at 52.222-41, Service Contract Labor Standards, as amended, renders the responsible contractor liable for the amount of any

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deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Deputy Regional Administrator, Wage and Hour Division, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Labor Standards statute or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), an Administrative Law Judge, or the Administrative Review Board. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

[54 FR 19816, May 8, 1989, as amended at 61 FR 39198, July 26, 1996; 72 FR 63081, Nov. 7, 2007; 79 FR 24207, Apr. 29, 2014; 83 FR 42573, Aug. 22, 2018]

### **22.1023 Termination for default.**

As provided by the Service Contract Labor Standards statute, any contractor failure to comply with the requirements of the contract clauses related to the Service Contract Labor Standards statute may be grounds for termination for default (see paragraph (k) of the clause at 52.222-41, Service Contract Labor Standards).

[79 FR 24207, Apr. 29, 2014]

### **22.1024 Cooperation with the Department of Labor.**

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available informa-

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tion on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

### **22.1025 Ineligibility of violators.**

Persons or firms found to be in violation of the Service Contract Labor Standards statute will have an active exclusion record contained in the System for Award Management (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the Service Contract Labor Standards statute, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

[54 FR 19816, May 8, 1989, as amended at 60 FR 33066, June 26, 1995; 69 FR 76349, Dec. 20, 2004; 78 FR 37679, June 21, 2013; 79 FR 24207, Apr. 29, 2014; 83 FR 48697, Sept. 26, 2018]

### **22.1026 Disputes concerning labor standards.**

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222-41, Service Contract Labor Standards, and not under the clause at 52.233-1, Disputes.

[54 FR 19816, May 8, 1989, as amended at 61 FR 39198, July 26, 1996; 72 FR 63081, Nov. 7, 2007; 79 FR 24207, Apr. 29, 2014]

## **Subpart 22.11—Professional Employee Compensation**

### **22.1101 Applicability.**

The Service Contract Act of 1965, now codified at 41 U.S.C. chapter 67, Service Contract Labor Standards, was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees.

[79 FR 24207, Apr. 29, 2014]

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### 22.1102 Definition.

*Professional employee*, as used in this subpart, means any person meeting the definition of *employee employed in a bona fide . . . professional capacity* given in 29 CFR part 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics), and teaching. To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties.

[48 FR 42258, Sept. 19, 1983, as amended at 66 FR 2130, Jan. 10, 2001]

### 22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated contracts when the contract amount is expected to exceed \$750,000 and services are to be provided which will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employee compensation may be assessed adversely as one of the factors considered in making an award.

[77 FR 75776, Dec. 21, 2012, as amended at 80 FR 38298, July 2, 2015; 85 FR 62489, Oct. 2, 2020]

## Subpart 22.12 [Reserved]

## Subpart 22.13—Equal Opportunity for Veterans

SOURCE: 66 FR 53488, Oct. 22, 2001, unless otherwise noted.

### 22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the following:

(a) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act).

(b) The Veterans Employment Opportunities Act of 1998, Public Law 105-339.

(c) The Jobs for Veterans Act, Public Law 107-288.

(d) Executive Order 11701, January 24, 1973 (3 CFR, 1971-1975 Comp., p. 752).

(e) The regulations of the Secretary of Labor (41 CFR parts 60-300 and 61-300).

[75 FR 60251, Sept. 29, 2010, as amended at 79 FR 43577, July 25, 2014; 80 FR 75910, Dec. 4, 2015]

### 22.1301 Definitions.

As used in this subpart—

*Active duty wartime or campaign badge veteran* means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

*Armed Forces service medal veteran* means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

*Disabled veteran* means—

(1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

*Executive and senior management* means—

(1) Any employee—

(i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities;

(ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(iii) Who customarily and regularly directs the work of two or more other employees; and

(iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

*Protected veteran* means a veteran who is protected under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212; specifically, a veteran who may be classified as a “disabled veteran,” “recently separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran,” as defined by this section.

*Qualified disabled veteran* means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

*Recently separated veteran* means any veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval, or air service.

*United States*, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

[75 FR 60251, Sept. 29, 2010, as amended at 76 FR 39234, July 5, 2011; 79 FR 43577, July 25, 2014]

### 22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to—

(1) List all employment openings, with the appropriate employment service delivery system where the opening occurs, except for—

(i) Executive and senior management positions;

(ii) Positions to be filled from within the contractor’s organization; and

(iii) Positions lasting three days or less;

(2) Take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a protected veteran, in all employment practices;

(3) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans; and

(4) Establish a hiring benchmark and apply it to hiring of protected veterans in each establishment, on an annual basis, in the manner prescribed in the regulations of the Secretary of Labor.

(b) Except for contracts for commercial products or commercial services, or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted the required annual VETS-4212, Federal Contractor Veterans’ Employment Report (VETS-4212 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

[75 FR 60251, Sept. 29, 2010, as amended at 79 FR 43577, July 25, 2014; 80 FR 75910, Dec. 4, 2015; 86 FR 61028, Nov. 4, 2021]

### 22.1303 Applicability.

(a) The Act applies to all contracts and subcontracts for personal property and nonpersonal services (including

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construction) of \$150,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Equal Opportunity for Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(c) The Act requires submission of the VETS-4212 Report in all cases where the contractor or subcontractor has received an award of \$150,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

[66 FR 53488, Oct. 22, 2001, as amended at 71 FR 57368, Sept. 28, 2006; 75 FR 60251, Sept. 29, 2010; 80 FR 38298, July 2, 2015; 80 FR 75910, Dec. 4, 2015]

### 22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS-4212 Report, the contracting officer may—

(a) Query the Department of Labor's VETS-4212 Database via the Internet at <http://www.dol.gov/vets/vets4212.htm> under "Filing Verification"; and

(b) Contact the VETS-4212 customer support via email at [VETS4212-customersupport@dol.gov](mailto:VETS4212-customersupport@dol.gov) for confirmation, if the proposed contractor represents that it has submitted the VETS-4212 Report and is not listed on the verification file.

[80 FR 75910, Dec. 4, 2015, as amended at 83 FR 42573, Aug. 22, 2018]

### 22.1305 Waivers.

(a) The Director, Office of Federal Contract Compliance Programs, Department of Labor, may waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, for—

(1) Any contract if a waiver is in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The head of the agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency must notify the Deputy Assistant Secretary of Labor in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor may withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For procurements entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

[66 FR 53488, Oct. 22, 2001, as amended at 75 FR 60251, Sept. 29, 2010]

### 22.1306 Department of Labor notices and reports.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (see <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>).

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans, unless all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, have been waived see 22.1305). The contractor and subcontractor must file VETS-4212, Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your

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VETS-4212 Report'' at <http://www.dol.gov/vets/vets4212.htm>).

[75 FR 60251, Sept. 29, 2010, as amended at 77 FR 204, Jan. 3, 2012; 80 FR 75910, Dec. 4, 2015]

### 22.1307 Collective bargaining agreements.

If performance under the clause at 52.222-35, Equal Opportunity for Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

[66 FR 53488, Oct. 22, 2001, as amended at 75 FR 60251, Sept. 29, 2010]

### 22.1308 Complaint procedures.

Following agency procedures, the contracting office must forward any complaints received about the administration of the Act to the Veterans' Employment and Training Service of the Department of Labor, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veterans' Employment Representative or designee, at the local State employment office. The Director, Office of Federal Contract Compliance Programs, is responsible for investigating complaints.

[75 FR 60251, Sept. 29, 2010]

### 22.1309 Actions because of noncompliance.

The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Equal Opportunity for Veterans. These sanctions (see 41 CFR 60-300.66) may include—

- (a) Withholding progress payments;
- (b) Termination or suspension of the contract; or

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- (c) Debarment of the contractor.

[66 FR 53488, Oct. 22, 2001, as amended at 75 FR 60252, Sept. 29, 2010]

### 22.1310 Solicitation provision and contract clauses.

(a)(1) Insert the clause at 52.222-35, Equal Opportunity for Veterans, in solicitations and contracts if the expected value is \$150,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States; or

(ii) The Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, has waived, in accordance with 22.1305(a), or the head of the agency has waived, in accordance with 22.1305(b), all of the terms of the clause.

(2) If the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222-37, Employment Reports on Veterans, in solicitations and contracts containing the clause at 52.222-35, Equal Opportunity for Veterans.

(c) Insert the provision at 52.222-38, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial products or commercial services.

[66 FR 53488, Oct. 22, 2001, as amended at 71 FR 57368, Sept. 28, 2006; 75 FR 60252, Sept. 29, 2010; 79 FR 43578, July 25, 2014; 80 FR 38298, July 2, 2015; 86 FR 61028, Nov. 4, 2021]

## Subpart 22.14—Employment of Workers with Disabilities

### 22.1400 Scope of subpart.

This subpart prescribes policies and procedures for implementing section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of

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Labor (41 CFR part 60-741). In this subpart, the terms *contract* and *contractor* include *subcontract* and *subcontractor*.

[48 FR 42258, Sept. 19, 1983, as amended at 79 FR 43578, July 25, 2014]

### 22.1401 Policy.

Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to—

(a) Take affirmative action to employ, and advance in employment, qualified individuals with disabilities, and to otherwise treat qualified individuals without discrimination based on their physical or mental disability;

(b) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities; and

(c) Compare the utilization of individuals with disabilities in their workforces to the utilization goal, as prescribed in the regulations of the Secretary of Labor, on an annual basis.

[79 FR 43578, July 25, 2014]

### 22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of \$15,000 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222-36, Equal Opportunity for Workers with Disabilities, implements the Act.

(b) The requirements of the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

[63 FR 34074, June 22, 1998, as amended at 75 FR 53133, Aug. 30, 2010; 79 FR 43578, July 25, 2014]

### 22.1403 Waivers.

(a) The Director of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (Director of OFCCP), may waive the application of any or all of the terms of the clause

at 52.222-36, Equal Opportunity for Workers with Disabilities, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The head of an agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency shall notify the Director of OFCCP in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director of OFCCP to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of formal sealed bidding unless it is made more than 10 days before the date set for bid opening.

[48 FR 42258, Sept. 19, 1983, as amended at 52 FR 19803, May 27, 1987; 63 FR 34074, June 22, 1998; 79 FR 43578, July 25, 2014]

### 22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The contracting officer may obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

[63 FR 34074, June 22, 1998]

### 22.1405 Collective bargaining agreements.

If performance under the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, may necessitate a

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revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 34074, June 22, 1998; 79 FR 43578, July 25, 2014]

### 22.1406 Complaint procedures.

(a) Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to—

(1) Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; or

(2) Any OFCCP regional or area office.

(b) The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record.

[79 FR 43578, July 25, 2014]

### 22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Equal Opportunity for Workers with Disabilities. These sanctions (see 41 CFR 60-741.66) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 34074, June 22, 1998; 79 FR 43578, July 25, 2014]

### 22.1408 Contract clause.

(a) Insert the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, in solicitations and con-

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tracts that exceed or are expected to exceed \$15,000, except when—

(1) Both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

(2) The Director of OFCCP or agency head has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the Director of OFCCP or agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its *Alternate I*.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 34074, June 22, 1998; 68 FR 28082, May 22, 2003; 75 FR 53133, Aug. 30, 2010; 79 FR 43578, July 25, 2014]

## Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

SOURCE: 66 FR 5347, Jan. 18, 2001, unless otherwise noted.

### 22.1500 Scope.

This subpart applies to acquisitions of supplies that exceed the micro-purchase threshold.

### 22.1501 Definitions.

As used in this subpart—

*Forced or indentured child labor* means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

*List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor* means the list published by the Department of Labor in accordance with Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The list identifies products, by their country of origin,

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that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.

### 22.1502 Policy.

Agencies must take appropriate action to enforce the laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor, consistent with 19 U.S.C. 1307, 29 U.S.C. 201, *et seq.*, and 41 U.S.C. chapter 65. Agencies should make every effort to avoid acquiring such products.

[79 FR 24208, Apr. 29, 2014]

### 22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(a) When issuing a solicitation for supplies expected to exceed the micro-purchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) ([www.dol.gov/ilab/](http://www.dol.gov/ilab/)) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

(1) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);

(2) Mexico, and the anticipated value of the acquisition is \$102,280 or more (see subpart 25.4); or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro,

Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$174,000 or more (see 25.402(b)).

(c) Except as provided in paragraph (b) of this section, before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—

(1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or

(2)(i) It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.

(d) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

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(f) Proper certification will not prevent the head of an agency from imposing remedies in accordance with section 22.1504(a)(4) if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.

[66 FR 5347, Jan. 18, 2001]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 22.1503, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### 22.1504 Violations and remedies.

(a) *Violations.* The Government may impose remedies set forth in paragraph (b) of this section for the following violations (note that the violations in paragraphs (a)(3) and (a)(4) of this section go beyond violations of the requirements relating to certification of end products) (see 22.1503):

(1) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.

(2) The contractor has failed to cooperate as required in accordance with the clause at 52.222-19, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.

(3) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(b) *Remedies.* (1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

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### 22.1505 Solicitation provision and contract clause.

(a) Except as provided in paragraph (b) of 22.1503, insert the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, except solicitations for commercial products or commercial services that include the provision at 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services. The contracting officer must identify in paragraph (b) of the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or paragraph (i)(1) of the provision at 52.212-3, any applicable end products and countries of origin from the List. For solicitations estimated to equal or exceed \$50,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified at 22.1503(b), in accordance with the specified thresholds.

(b) Insert the clause at 52.222-19, Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase threshold.

[66 FR 5347, Jan. 18, 2001, as amended at 86 FR 61028, Nov. 4, 2021; 87 FR 73892, Dec. 1, 2022]

## Subpart 22.16—Notification of Employee Rights Under the National Labor Relations Act

SOURCE: 75 FR 77725, Dec. 13, 2010, unless otherwise noted.

### 22.1600 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 13496, dated January 30, 2009 (74 FR 6107, February 4, 2009).

### 22.1601 Definitions.

As used in this subpart—

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*Secretary* means the Secretary of Labor, U.S. Department of Labor.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

### 22.1602 Policy.

(a) Executive Order 13496 requires contractors to post a notice informing employees of their rights under Federal labor laws.

(b) The Secretary has determined that the notice must contain employee rights under the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.* The Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self-organize, and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

### 22.1603 Exceptions.

(a) The requirements of this subpart do not apply to—

(1) Contracts under the simplified acquisition threshold;

(2) Subcontracts of \$10,000 or less; and

(3) Contracts or subcontracts for work performed exclusively outside the United States.

(b) *Exemptions granted by the Secretary.* (1) If the Secretary finds that the requirements of the Executive Order impair the ability of the Government to procure goods and services on an economical and efficient basis or if special circumstances require an exemption in order to serve the national interest, the Secretary may exempt a contracting department or agency, or groups of departments or agencies, from the requirements of any or all of the provisions of this Executive Order with respect to a particular contract or subcontract, or any class of contracts or subcontracts, including the requirement to include the clause at 52.222-40, or parts of that clause, in contracts.

(2) Requests for exemptions may be submitted in accordance with Department of Labor regulations at 29 CFR 471.3.

### 22.1604 Compliance evaluation and complaint investigations and sanctions for violations.

(a) The Secretary may conduct compliance evaluations or investigate complaints of any contractor or subcontractor to determine if any of the requirements of the clause at 52.222-40 have been violated.

(b) Contracting departments and agencies shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions.

(c) If the Secretary determines that there has been a violation, the Secretary may take such actions as set forth in 29 CFR 471.14.

(d) The Secretary may not terminate or suspend a contract or suspend or debar a contractor if the agency head has provided written objections, which must include a statement of reasons for the objection and a finding that the contractor's performance is essential to the agency's mission, and continues to object to the imposition of such sanctions and penalties. Procedures for enforcement by the Secretary are set out in 29 CFR 471.10 through 29 CFR 471.16.

### 22.1605 Contract clause.

(a) Insert the clause at 52.222-40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial products, commercial services, and commercially available off-the-shelf items, except acquisitions—

(1) *Under the simplified acquisition threshold.* For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

(b) A contracting agency may modify the clause at 52.222-40, if necessary, to reflect an exemption granted by the Secretary (*see* 22.1603(b)).

[66 FR 5347, Jan. 18, 2001, as amended at 86 FR 61028, Nov. 4, 2021]

### Subpart 22.17—Combating Trafficking in Persons

SOURCE: 71 FR 20302, Apr. 19, 2006, unless otherwise noted.

#### 22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. chapter 78 and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012.

[80 FR 4987, Jan. 29, 2015]

#### 22.1701 Applicability.

(a) This subpart applies to all acquisitions.

(b) The requirement at 22.1703(c) for a certification and compliance plan applies only to any portion of a contract or subcontract that—

(1) Is for supplies, other than commercially available off-the-shelf (COTS) items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds \$550,000.

[80 FR 4987, Jan. 29, 2015, as amended at 85 FR 62489, Oct. 2, 2020]

#### 22.1702 Definitions.

As used in this subpart—

*Agent* means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security

for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

*Involuntary servitude* includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

*Forced labor* means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

*Recruitment fees* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for—

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

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(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or work-er welfare funds;

(xi) Transportation and subsistence costs—

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is—

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to—

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

*Severe forms of trafficking in persons* means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

[71 FR 20302, Apr. 19, 2006, as amended at 72 FR 46341, Aug. 17, 2007; 74 FR 2744, Jan. 15, 2009; 80 FR 4987, Jan. 29, 2015; 83 FR 65477, Dec. 20, 2018]

### 22.1703 Policy.

The United States Government has adopted a policy prohibiting trafficking in persons, including the trafficking-related activities below. Additional information about trafficking in persons may be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>. Government solicitations and contracts shall—

(a) Prohibit contractors, contractor employees, subcontractors, subcontractor employees, and their agents from—

(1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procuring commercial sex acts during the period of performance of the contract;

(3) Using forced labor in the performance of the contract;

(4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)(i) Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charging employees or potential employees recruitment fees;

(7)(i)(A) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, for portions of contracts and subcontracts performed outside the United States; or

(B) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee for portions of contracts and subcontracts performed inside the United States; except that—

(ii) The requirements of paragraph (a)(7)(i) of this section do not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency, designated by the agency head in accordance with agency procedures, from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (a)(7)(i) of this section are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall also offer return transportation to a witness at a time that supports the witness' need to testify. This paragraph does not apply when the exemptions at paragraph (a)(7)(ii) of this section apply.

(8) Providing or arranging housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document in writing. Such written document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons. The contracting officer shall consider

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the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons, and the number of non-U.S. citizens expected to be employed, when deciding whether to require work documents in the contract;

(b) Require contractors and subcontractors to notify employees of the prohibited activities described in paragraph (a) of this section and the actions that may be taken against them for violations;

(c) With regard to certification and a compliance plan—

(1)(i) Require the apparent successful offeror to provide, before contract award, a certification (see 52.222-56) that the offeror has a compliance plan if any portion of the contract or subcontract—

(A) Is for supplies, other than COTS items (see 2.101), to be acquired outside the United States, or services to be performed outside the United States; and

(B) The estimated value exceeds \$550,000.

(ii) The certification must state that—

(A) The offeror has implemented the plan and has implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor or agent engaging in prohibited activities; and

(B) After having conducted due diligence, either—

(1) To the best of the offeror's knowledge and belief, neither it nor any of its agents, proposed subcontractors, or their agents, has engaged in any such activities; or

(2) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the offeror or proposed subcontractor has taken the appropriate remedial and referral actions;

(2) Require annual certifications (see 52.222-50(h)(5)) during performance of the contract, when a compliance plan was required at award;

(3)(i) Require the contractor to obtain a certification from each subcontractor, prior to award of a subcontract, if any portion of the subcontract—

(A) Is for supplies, other than COTS items (see 2.101), to be acquired outside the United States, or services to be performed outside the United States; and

(B) The estimated value exceeds \$550,000.

(ii) The certification must state that—

(A) The subcontractor has implemented a compliance plan; and

(B) After having conducted due diligence, either—

(1) To the best of the subcontractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents, has engaged in any such activities; or

(2) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the subcontractor has taken the appropriate remedial and referral actions;

(4) Require the contractor to obtain annual certifications from subcontractors during performance of the contract, when a compliance plan was required at the time of subcontract award; and

(5) Require that any compliance plan or procedures shall be appropriate to the size and complexity of the contract and the nature and scope of its activities, including the number of non-U.S. citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons. The minimum elements of the plan are specified at 52.222-50(h);

(d) Require the contractor and subcontractors to—

(1) Disclose to the contracting officer and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(2) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(3) Cooperate fully in providing reasonable access to their facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. chapter 78), Executive Order

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13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(4) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities;

(e) Provide suitable remedies, including termination, to be imposed on contractors that fail to comply with the requirements of paragraphs (a) through (d) of this section.

[72 FR 46341, Aug. 17, 2007, as amended at 74 FR 2744, Jan. 15, 2009; 80 FR 4987, Jan. 29, 2015; 83 FR 65477, Dec. 20, 2018; 85 FR 62489, Oct. 2, 2020]

### 22.1704 Violations and remedies.

(a) *Violations.* It is a violation of the Trafficking Victims Protection Act of 2000, as amended, (22 U.S.C. chapter 78), E.O. 13627, or the policies of this subpart if—

(1) The contractor, contractor employee, subcontractor, subcontractor employee, or agent engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, subcontractor employee, or agent procures a commercial sex act during the period of performance of the contract;

(3) The contractor, contractor employee, subcontractor, subcontractor employee, or agent uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at 52.222–50, Combating Trafficking in Persons.

(b) *Credible information.* Upon receipt of credible information regarding a violation listed in paragraph (a) of this section, the contracting officer—

(1) Shall promptly notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement officials with jurisdiction over the alleged offense; and

(2) May direct the contractor to take specific steps to abate the alleged violation or enforce the requirements of its compliance plan.

(c) *Receipt of agency Inspector General report.* (1) The head of an executive agency shall ensure that the contracting officer is provided a copy of the agency Inspector General report of an investigation of a violation of the trafficking in persons prohibitions in 22.1703(a) and 52.222–50(b).

(2)(i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the executive agency, in accordance with agency procedures, shall delegate to an authorized agency official, such as the agency suspending or debarring official, the responsibility to—

(A) Expeditiously conduct an administrative proceeding, allowing the contractor the opportunity to respond to the report;

(B) Make a final determination as to whether the allegations are substantiated; and

(C) Notify the contracting officer of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding is the suspending and debarring official, the suspending and debarring official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in subpart 9.4 to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the factors at 22.1704(d)(2).

(d) *Remedies.* After a final determination in accordance with paragraph (c)(2)(ii) of this section that the allegations of a trafficking in persons violation are substantiated, the contracting officer shall—

(1) Enter the violation in FAPIIS (see 42.1503(h)); and

(2) Consider taking any of the remedies specified in paragraph (e) of the clause at 52.222–50, Combating Trafficking in Persons. These remedies are in addition to any other remedies

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available to the United States Government. When determining the appropriate remedies, the contracting officer may consider the following factors:

(i) *Mitigating factors.* The contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation, was in compliance with the plan at the time of the violation, and has taken appropriate remedial actions for the violations, that may include reparation to victims for such violations.

(ii) *Aggravating factors.* The contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by a contracting officer to do so.

[80 FR 4987, Jan. 29, 2015]

### 22.1705 Solicitation provision and contract clause.

(a)(1) Insert the clause at 52.222-50, Combating Trafficking in Persons, in all solicitations and contracts.

(2) Use the clause with its Alternate I when the contract will be performed outside the United States (as defined at 22.1702) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of “off-limits” local establishments) that apply to contractor employees at the contract place of performance.

(b) Insert the provision at 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations if—

(1) It is possible that at least \$550,000 of the value of the contract may be performed outside the United States; and

(2) The acquisition is not entirely for commercially available off-the-shelf items.

[80 FR 4987, Jan. 29, 2015, as amended at 85 FR 62489, Oct. 2, 2020]

### Subpart 22.18—Employment Eligibility Verification

SOURCE: 73 FR 67703, Nov. 14, 2008, unless otherwise noted.

### 22.1800 Scope.

This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service’s employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

### 22.1801 Definitions.

As used in this subpart—  
*Commercially available off-the-shelf (COTS) item*—

(1) Means any item of supply that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at 2.101;

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but

is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

*United States*, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

[73 FR 67703, Nov. 14, 2008, as amended at 77 FR 44066, July 26, 2012; 78 FR 46795, Aug. 1, 2013; 86 FR 61028, Nov. 4, 2021]

#### 22.1802 Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States, but is not a substitute for any other employment eligibility verification requirements.

(b) Contracting officers shall include in solicitations and contracts, as prescribed at 22.1803, requirements that Federal contractors must—

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the United States, except that the contractor may choose to verify only new hires assigned to the contract if the contractor is—

(i) An institution of higher education (as defined at 20 U.S.C. 1001(a));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at 52.222–54, in subcontracts for—

(i) Services, except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) Construction.

(c) Contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of—

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)–12.

(d) In exceptional cases, the head of the contracting activity may waive the E-Verify requirement for a contract or subcontract or a class of contracts or subcontracts, either temporarily or for the period of performance. This waiver authority may not be delegated.

(e) DHS and the Social Security Administration (SSA) may terminate a contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency must refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222–54. If the contractor is suspended or debarred as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor,

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then the contractor must reenroll in E-Verify.

[73 FR 67703, Nov. 14, 2008, as amended at 77 FR 44066, July 26, 2012; 86 FR 61028, Nov. 4, 2021]

### 22.1803 Contract clause.

Insert the clause at 52.222-54, Employment Eligibility Verification, in all solicitations and contracts that exceed \$150,000, except those that—

- (a) Are only for work that will be performed outside the United States;
- (b) Are for a period of performance of less than 120 days; or
- (c) Are only for—
  - (1) Commercially available off-the-shelf items;
  - (2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of definition of “commercial product” at 2.101;
  - (3) Items that would be COTS items if they were not bulk cargo; or
  - (4) Commercial services that are—
    - (i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);
    - (ii) Performed by the COTS provider; and
    - (iii) Are normally provided for that COTS item.

[73 FR 67703, Nov. 14, 2008, as amended at 85 FR 40067, July 2, 2020; 86 FR 61028, Nov. 4, 2021]

## Subpart 22.19—Increasing the Minimum Wage for Contractors

SOURCE: 79 FR 74550, Dec. 15, 2014, unless otherwise noted.

### 22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, which requires minimum wages for certain workers; Department of Labor (DOL) implementing regulations are found at 29 CFR part 23. This E.O. superseded E.O. 13658; DOL implementing regulations for E.O. 13658 are found at 29 CFR part 10.

[87 FR 4121, Jan. 26, 2022]

### 22.1901 Definitions.

As used in this subpart—

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

*Worker* (in accordance with 29 CFR 23.20)—

(1)(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker’s work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

[79 FR 74550, Dec. 15, 2014, as amended at 85 FR 67627, Oct. 23, 2020; 87 FR 4122, Jan. 26, 2022]

**22.1902 Policy.**

(a) Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts and subcontracts subject to this subpart is—

(1) At least \$15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The Administrator of the Wage and Hour Division (the Administrator) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See 22.1904.)

(b) *Relationship with other wage rates.*

(1) Nothing in this subpart shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(2) The E.O. minimum wage rate applies whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(c) *Application to tipped workers.* Policies and procedures in DOL regulations at 29 CFR 23.240(b) and 23.280 address the relationship between the E.O. minimum wage and wages of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

[79 FR 74550, Dec. 15, 2014, as amended at 87 FR 4122, Jan. 26, 2022]

**22.1903 Applicability.**

(a) This subpart applies to contracts covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4), that require performance in whole or in part within the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands,

American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*). When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States.

(b)(1) This subpart applies to workers as defined at 22.1901. As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This subpart does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.*, those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

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(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(c) Agency Labor Advisors, as defined at 22.001, are listed at <https://www.sam.gov> and are available to provide guidance and assistance with the application of this subpart.

[79 FR 74550, Dec. 15, 2014, as amended at 85 FR 67628, Oct. 23, 2020; 86 FR 71325, Dec. 15, 2021; 87 FR 4122, Jan. 26, 2022]

### 22.1904 Annual Executive Order Minimum Wage Rate.

(a) For the E.O. minimum wage rate that becomes effective on January 30, 2022, and annually thereafter, the Administrator will—

(1) Notify the public of the new E.O. minimum wage rate at least 90 days before it becomes effective by publishing a notice in the FEDERAL REGISTER;

(2) Publish and maintain on Wage Determinations at *SAM.gov*, <https://www.sam.gov> or any successor site, the E.O. minimum wage rate; and

(3) Include a general notice on wage determinations which are issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The notice will provide information on the

E.O. minimum wage and how to obtain annual updates.

(b)(1) The contractor may request a price adjustment only after the effective date of a new annual E.O. minimum wage determination published pursuant to paragraph (a). Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(2) The wage rate price adjustment under this clause is the lowest amount calculated by subtracting from the new E.O. wage rate the following: The current E.O. minimum wage rate; the current service or construction wage determination rate under the contract (if the wage rate is applicable to that worker); or the actual wage currently paid the worker. If the amount is zero or below, there will be no increase paid for this worker.

#### (i) Example 1—New E.O. wage rate is \$16.10.

Previous E.O. wage rate is \$15.70. .... The current service or construction wage determination rate applicable to this worker under the contract is \$15.75. The actual wage currently paid to the worker is \$15.80.	Analysis: The calculation is $\$16.10 - \$15.80 = \$0.30$ . The price adjustment for this worker is \$0.30.
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#### (ii) Example 2—New E.O. wage rate is \$15.50.

Previous E.O. wage rate is \$15.10. .... The current service or construction wage determination rate applicable to this worker under the contract is \$15.75. The actual wage currently paid to the worker is \$15.80.	Analysis: The calculation is $\$15.50 - \$15.80 = -\$0.30$ . There is no price adjustment for this worker.
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(3) The contracting officer shall not adjust the contract price for any costs other than those identified in paragraph (b)(1) of this section, and shall not provide duplicate price adjust-

ments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the

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Wage Rate Requirements (Construction) statute.

[79 FR 74550, Dec. 15, 2014, as amended at 80 FR 75917, Dec. 4, 2015; 81 FR 11992, Mar. 7, 2016; 86 FR 71325, Dec. 15, 2021; 87 FR 4123, Jan. 26, 2022]

### **22.1905 Enforcement of Executive Order Minimum Wage Requirements.**

(a) *Authority.* (1) Section 5 of the E.O. grants the authority for investigating potential violations of, and obtaining compliance with, the E.O. to the Secretary of Labor. The Secretary of Labor, in promulgating the implementing regulations required by Section 4 of the E.O., has assigned this authority to the Administrator. Contracting agencies do not have authority to conduct compliance investigations under 29 CFR part 10 or part 23 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.

(2) Contracting officers shall withhold payment at the direction of the Administrator.

(3) The contracting officer shall withhold payment, without a request from the Administrator, if the contractor fails to comply with the requirements in paragraph (e)(2) of 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 to furnish payroll records, until such time as the noncompliance is corrected.

(b) *Complaints.* (1) Complaints may be filed with the contracting officer or the Administrator by any person, entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) Upon receipt of a complaint, or if notified that the Administrator has received a complaint, the contracting officer shall report the following information, within 14 days, if available without conducting an investigation,

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to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue NW., Room S3006, Washington, DC 20210.

(i) The complaint or description of the alleged violation;

(ii) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(iii) Evidence that clause 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, (or its predecessor for complaints under 29 CFR part 10) was included in the contract;

(iv) Information concerning known settlement negotiations between the parties, if applicable; and

(v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) *Investigations.* Complaints will be investigated by the Administrator, if warranted, in accordance with the procedures in 29 CFR part 23.430.

(d) *Remedies and sanctions—(1) Unpaid wages.* When the Administrator's investigation reveals that a contractor has failed to pay the applicable E.O. minimum wage, the Administrator will notify the contractor and the contracting agency of the unpaid wage violation, and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator may direct withholding of payments due on the contract or any other contract between the contractor and the Federal Government. Upon final decision and direction of the Administrator, the contracting agency shall transfer the withheld funds to the Department of Labor for disbursement in accordance with the procedures at 22.406-9(c).

(2) *Antiretaliation.* When a contractor has been found to have violated paragraph (i) of clause 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, the Administrator may provide for relief to the worker in accordance with 29 CFR 23.440.

(3) *Debarment.*(i) The Department of Labor may initiate debarment proceedings under 29 CFR 23.520 whenever

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a contractor is found to have disregarded its obligations under 29 CFR part 23.

(ii) Contracting officers shall consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart.

(4) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the contract clause in a contract to which E.O. 14026 applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

[79 FR 74550, Dec. 15, 2014, as amended at 80 FR 75917, Dec. 4, 2015; 87 FR 4123, Jan. 26, 2022]

### 22.1906 Contract clause.

Insert the clause at 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, in solicitations and contracts that include the clause at 52.222–6, Construction Wage Rate Requirements, or 52.222–41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States.

[79 FR 74550, Dec. 15, 2014, as amended at 87 FR 4123, Jan. 26, 2022]

## Subpart 22.20 [Reserved]

### Subpart 22.21—Establishing Paid Sick Leave for Federal Contractors

SOURCE: 81 FR 91631, Dec. 16, 2016, unless otherwise noted.

#### 22.2100 Scope of subpart.

This subpart prescribes policies and procedures to implement E.O. 13706, Establishing Paid Sick Leave for Federal

Contractors, dated September 7, 2015, and Department of Labor implementing regulations at 29 CFR part 13.

#### 22.2101 Definitions.

As used in this subpart (in accordance with 29 CFR 13.2)—

*Accrual year* means the 12-month period during which a contractor may limit an employee's accrual of paid sick leave to no less than 56 hours (see 29 CFR 13.5(b)(1)).

*Certification issued by a health care provider* has the meaning given in 29 CFR 13.2.

*Employee*—

(1)(i) Means any person engaged in performing work on or in connection with a contract covered by E.O. 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) An employee performs on a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs in connection with a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

*Health care provider* has the meaning given in 29 CFR 13.2.

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*Multiemployer plan* means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

*Paid sick leave* means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

### 22.2102 Policy.

(a) The Government shall require contractors to allow employees performing work on or in connection with a contract covered by E.O. 13706 to accrue and use paid sick leave in accordance with the E.O. and 29 CFR part 13.

(b) *Interaction with other laws.* Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13. For additional details regarding interaction with the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Family and Medical Leave Act, and State and local paid sick time laws, see 29 CFR 13.5(f)(2) through (4).

(c) *Interaction with paid time off policies.* In accordance with 29 CFR 13.5(f)(5)(i), the paid sick leave requirements of E.O. 13706 and 29 CFR part 13 may be satisfied by a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise, where the voluntary paid time off policy meets or exceeds the requirements. For additional details regarding paid time off policies, see 29 CFR 13.5(f)(5)(ii) and (iii).

(d) Unless otherwise provided in this subpart, compliance is the responsibility of the contractor, and enforcement is the responsibility of the Department of Labor.

### 22.2103 Applicability.

This subpart applies to—

(a) Contracts that—

(1) Are covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as

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the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis-Bacon Act, subpart 22.4); and

(2) Require performance in whole or in part within the United States. When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States; and

(b) Employees performing on or in connection with such contracts whose wages are governed by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions.

### 22.2104 Exclusions.

The following are excluded from coverage under this subpart:

(a) Employees performing in connection with contracts covered by the E.O. for less than 20 percent of their work hours in a given workweek. This exclusion is inapplicable to employees performing on contracts covered by the E.O., *i.e.*, those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek (see 29 CFR 13.4(e)).

(b) Until the earlier of the date the agreement terminates or January 1, 2020, employees whose covered work is governed by a collective bargaining agreement ratified before September 30, 2016, that—

(1) Already provides 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year; or

(2) Provides less than 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year, provided that each year the contractor provides covered employees with the difference between 56 hours (or 7 days) and the amount provided

under the existing agreement in accordance with 29 CFR 13.4(f).

(c) The Government's unilateral exercise of a pre-negotiated option to renew an existing contract that does not contain the clause at 52.222-62 will not automatically trigger the application of that clause. (See definition of "new contract" at 29 CFR 13.2).

**22.2105 Paid sick leave for Federal contractors and subcontractors.**

In accordance with 29 CFR 13.5, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, the following contractor requirements apply:

(a) *Accrual.* (1) Contractors are required to permit an employee to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a contract covered by the E.O. (see 29 CFR 13.5(a)(1)).

(2) Contractors are required to inform each employee, in writing, of the amount of paid sick leave the employee has accrued but not used no less than once each pay period or each month, whichever interval is shorter, as well as upon a separation from employment and upon reinstatement of paid sick leave, pursuant to 29 CFR 13.5(b)(4) (see 29 CFR 13.5(a)(2)).

(3) Contractors may choose to provide employees with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time (see 29 CFR 13.5(a)(3)).

(b) *Maximum accrual, carryover, reinstatement, and payment for unused leave.* (1) Contractors may limit the amount of paid sick leave employees are permitted to accrue to not less than 56 hours in each accrual year (see 29 CFR 13.5(b)(1)).

(2) Paid sick leave shall carry over from one accrual year to the next. Paid sick leave carried over from the previous accrual year shall not count toward any limit the contractor sets on annual accrual (see 29 CFR 13.5(b)(2)).

(3) Contractors may limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours (see 29 CFR 13.5(b)(3)).

(4) Contractors are required to reinstate paid sick leave for employees only when rehired by the same contractor within 12 months after a job separation (see 29 CFR 13.5(b)(4)).

(5) Nothing in E.O. 13706 or 29 CFR part 13 requires contractors to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. If a contractor nevertheless makes such a payment in an amount equal to or greater than the value of the pay and benefits the employee would have received pursuant to 29 CFR 13.5(c)(3) had the employee used the paid sick leave, the contractor is relieved of the obligation to reinstate an employee's accrued paid sick leave upon rehiring the employee within 12 months of the separation pursuant to 29 CFR 13.5(b)(4) (see 29 CFR 13.5(b)(5)).

(c) *Use.* Contractors are required to permit an employee to use paid sick leave in accordance with 29 CFR 13.5(c).

(d) *Request for paid sick leave.* Contractors are required to permit an employee to use any or all of the employee's available paid sick leave upon the oral or written request of an employee that includes information sufficient to inform the contractor that the employee is seeking to be absent from work for a purpose described in 29 CFR 13.5(c) and, to the extent reasonably feasible, the anticipated duration of the leave (see 29 CFR 13.5(d)).

(e) *Certification or documentation for leave of 3 or more consecutive full workdays.* Contractors may require certification issued by a health care provider to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(i), (ii), or (iii), or documentation from an appropriate individual or organization to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(iv), only if the employee is absent for 3 or more consecutive full workdays (see 29 CFR 13.5(e)).

**22.2106 Prohibited acts.**

In accordance with 29 CFR 13.6, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, a contractor may not—

## 22.2107

(a) Interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.6(a));

(b) Discharge or in any other manner discriminate against any employee for—

(1) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;

(2) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 or 29 CFR part 13;

(3) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 or 29 CFR part 13; or

(4) Informing any other person about his or her rights under E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.6(b)); or

(c) Fail to make and maintain or to make available to authorized representatives of the Wage and Hour Division records for inspection, copying, and transcription as required by 29 CFR 13.25, or otherwise fail to comply with the requirements of 29 CFR 13.25 (see 29 CFR 13.6(c)).

### 22.2107 Waiver of rights.

Employees cannot waive, nor may contractors induce employees to waive, their rights under E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.7).

### 22.2108 Multiemployer plans or other funds, plans, or programs.

Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

### 22.2109 Enforcement of Executive Order 13706 paid sick leave requirements.

(a) *Authority.* Section 4 of the E.O. grants to the Secretary of Labor the authority for investigating potential violations of, and obtaining compliance with, the E.O. The Secretary of Labor, in promulgating the implementing regulations required by section 3 of the E.O., has assigned this authority to the Administrator of the Wage and Hour Division. Contracting agencies do not have authority to conduct compliance

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investigations under 29 CFR part 13 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.

(b) *Complaints.* (1) Complaints are filed with the Administrator of the Wage and Hour Division and may be brought by any person (including the employee), entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) If the contracting agency receives a complaint or is notified that the Administrator of the Wage and Hour Division has received a complaint, the contracting officer shall report, within 14 days, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue NW., Room S3006, Washington, DC 20210, all of the following information that is available without conducting an investigation:

(i) The complaint or description of the alleged violation.

(ii) Available statements by the employee, contractor, or any other person regarding the alleged violation.

(iii) Evidence that clause 52.222–62, Paid Sick Leave Under Executive Order 13706, was included in the contract.

(iv) Information concerning known settlement negotiations between the parties, if applicable.

(v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) *Investigations.* Complaints will be investigated by the Administrator of the Wage and Hour Division, if warranted, in accordance with the procedures in 29 CFR 13.43.

(d) *Remedies and sanctions*—(1) *Withholding or suspending payment.* The contracting officer shall, upon his or her own action or upon written request of

the Administrator of the Wage and Hour Division—

(i)(A) Withhold or cause to be withheld from the contractor under the contract covered by the E.O. or any other Federal contract with the same contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of E.O. 13706 or 29 CFR part 13; and

(B) In the event of any such violation, the contracting agency may, after authorization or by direction of the Administrator of the Wage and Hour Division and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased; or

(ii) Take action to cause suspension of any further payment, advance, or guarantee of funds to a contractor that has failed to make available for inspection, copying, and transcription any of the records identified in 29 CFR 13.25.

(2) *Civil actions to recover greater underpayments than those withheld.* (i) If the payments withheld under 29 CFR 13.11(c) are insufficient to reimburse all monetary relief due, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary of Labor, may bring an action against the contractor in any court of competent jurisdiction to recover the remaining amount.

(ii) The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the employees who suffered the violation(s) of 29 CFR 13.6(a) or (b).

(iii) Any sum not paid to an employee because of inability to do so within 3 years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(3) *Termination.* Contracting officers may consider the failure of a contractor to comply with the requirements of E.O. 13706 or 29 CFR part 13 as grounds for termination for default or cause.

(4) *Debarment.* (i) The Department of Labor may initiate debarment proceedings under 29 CFR 13.44(d) and 29 CFR 13.52 whenever a contractor is found to have disregarded its obliga-

tions under E.O. 13706 or 29 CFR part 13.

(ii) Contracting officers shall consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart (see subpart 9.4).

(5) *Remedies for interference.* (i) When the Administrator of the Wage and Hour Division determines that a contractor has interfered with an employee's accrual or use of paid sick leave in violation of 29 CFR 13.6(a), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the interference and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide any appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include—

(A) Any pay and/or benefits denied or lost by reason of the violation;

(B) Other actual monetary losses sustained as a direct result of the violation; or

(C) Appropriate equitable or other relief.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(6) *Remedies for discrimination.* (i) When the Administrator of the Wage and Hour Division determines that a contractor has discriminated against an employee in violation of 29 CFR 13.6(b), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include, but is not limited to—

- (A) Employment;
- (B) Reinstatement;
- (C) Promotion; and
- (D) Restoration of leave, or lost pay and/or benefits.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(7) *Recordkeeping.* When a contractor fails to make, maintain, or protect records; or produce records when requested by authorized representatives of the Administrator of the Wage and Hour Division, or otherwise comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the Administrator of the Wage and Hour Division will request that the contractor remedy the violation. If the contractor

fails to produce required records upon request, the contracting officer shall, upon his or her own action or upon direction of an authorized representative of the Department of Labor, take such action as may be necessary to cause suspension of any further payment, advance, or guarantee of funds on the contract until such time as the violations are discontinued.

(e) *Inclusion of contract clause.* If a contracting agency fails to include the clause at FAR 52.222–62 in a contract to which the E.O. applies, the contracting officer, on his or her own initiative or within 15 days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

#### **22.2110 Contract clause.**

Insert the clause at 52.222–62, Paid Sick Leave Under Executive Order 13706, in solicitations and contracts that include the clause at 52.222–6, Construction Wage Rate Requirements, or 52.222–41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

### **PART 23—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY**

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23.000	Scope.
23.001	Definitions.
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#### **Subpart 23.1—Sustainable Products and Services**

23.100	Scope of subpart.
23.101	Definitions.
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