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the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

[61 FR 18688, Apr. 29, 1996, as amended at 61 FR 50452, Sept. 26, 1996]

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or nondisadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303–70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219–7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

(1) That involve the evaluation preference of this subpart; and

(2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36358, July 31, 1991, unless otherwise noted.

222.001 Definition.

Labor advisor, as used in this part, means the departmental or agency headquarters labor advisor.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101–1 General.

(a) Contracting offices shall—

(i) Obtain departmental approval before contacting a national office of a labor organization, a Government agency headquarters, or any other organization on a labor relations matter;

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

(iii) Obtain the approval of the agency head on major policy decisions regarding labor relations matters such as recommendations for plant seizure or injunctive action relating to potential or actual work stoppages; and

(iv) Submit questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

222.101–3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely;

(2) Disseminate information on labor disputes in accordance with departmental procedures; and

(3) File an initial labor dispute report using DD Form 1507, Work Stoppage Report, when a work stoppage is imminent or when a work stoppage occurs. File a follow-up report when a significant change occurs in the dispute. This reporting requirement is assigned Report Control Symbol DD–ACQ (AR) 1153.

[56 FR 36358, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 59 FR 27671, May 27, 1994]

222.101–3–70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. In making these determinations, consider, for example—

(1) Whether the dispute involves a product, project (including construction), or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; and

(2) Whether alternative sources of supply for the product, project, or service are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. The report must be in narrative form and include—

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources available to furnish the supply or service within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The head of the contracting activity shall submit impact reports to the agency head when—

(1) Specifically requested; or

(2) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(d) The labor advisor will expand the report submitted under paragraph (c) of this subsection by addressing the following, as appropriate—

(1) *Description of military program, project, or service.* Identify item, project, or service which will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(2) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(iii) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact.* Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities

of such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion*. (i) Describe the impact on operations of a 15–30, 30–60, and a 60–90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101–4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include the following information in the request—

(A) Contract number;

(B) A statement as to the urgency and criticality of the item needed;

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.);

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading; and

(E) Destination of the material, if different from that specified in the contract.

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this subsection, refer the matter to the labor advisor with the information required by 222.101–3–70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a nondelegable basis, may order removal of the items from the facility.

222.101–70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.

222.102–1 Policy.

(1) The Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act (OSHA). Contracting officers shall—

(i) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of the OSHA regulations to the Department of Labor; and

(ii) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(2) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor.

222.103 Overtime.

222.103–4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards Act violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of $500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of $500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402–70 Installation support contracts.

(a) Apply both the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) SCA coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the SCA. Apply SCA clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) DBA coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the DBA. Apply DBA clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either DBA painting/repairs or SCA maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the SCA. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is SCA maintenance or DBA painting/repairs, apply the following rules—

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the SCA.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the DBA by splitting individual tasks between orders or contracts.

222.403 Statutory and regulatory requirements.

222.403–4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Davis-Bacon Act wage determinations.

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of $500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671–DOL–AN.

222.404–2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from the appropriate district commander, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command division for the Navy; from the appropriate Regional Industrial Relations Office for the Air Force; and from the appropriate Defense Contract Management District, ATTN: Industrial Labor Relations Office, for the Defense Logistics Agency.

222.404–3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Submit requests for project wage determinations directly to the Department of Labor.

222.404–11 Wage determination appeals.

Send a copy of a petition for review filed by the contracting agency to the labor advisor.

222.406 Administration and enforcement.

222.406–1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(*1*) Davis-Bacon Act;

(*2*) Contract Work Hours and Safety Standards Act;

(*3*) Copeland (Anti-Kickback) Act;

(*4*) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(*5*) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(*1*) Employment of foremen, laborers, mechanics, and others;

(*2*) Wages and fringe benefits payments, payrolls, and statements;

(*3*) Differentiation between subcontractors and suppliers;

(*4*) Additional classifications;

(*5*) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(*6*) Penalties and sanctions for violations of the labor standards provisions; and

(*7*) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406–8 Investigations.

(a) The following guidance and procedures apply to investigations conducted by the contracting activity. (i)

Beginning of the investigation. The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation and that it includes examining pertinent records and interviewing employees; and

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor;

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation*—(A) *Review of the contract.*

(*1*) Verify that all required labor standards and clauses and the wage determination are included in the contract.

(*2*) Review the following items in the contract file, if applicable—

(*i*) List of subcontractors;

(*ii*) Payroll statements for the contractor and subcontractors;

(*iii*) Approvals of additional classifications;

(*iv*) Data regarding apprentices and trainees as required by FAR 22.406–4;

(*v*) Daily inspector's report or other inspection reports;

(*vi*) Employee interview statements; and

(*vii*) SF 1413, Statement and Acknowledgement.

(B) *Interview of the complainant.* Interview the complainant except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) *Interview of employees and former employees.* (*1*) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(*2*) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(*3*) Former employees may be interviewed elsewhere.

(*4*) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(*5*) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(*6*) Obtain information by mail when personal interviews are impractical.

(*7*) Use SF 1445, Labor Standards Interview, for employee interviews.

(*8*) Request employees to sign their statements and to initial any changes.

(*9*) Provide an evaluation of each employee's credibility.

(D) *Interview of foremen.* Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) *Interview of the contractor.* (*1*) Interview the contractor whenever the investigation indicates the possibility of a violation.

(*2*) Inform the contractor that—

(*i*) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(*ii*) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(*3*) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) *Review of contractor and subcontractor records.* (*1*) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or

copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406–2(a)(3)).

(*2*) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following—

(*i*) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(*ii*) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(*iii*) Computation of daily and weekly hours;

(*iv*) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(*v*) Gross weekly wages;

(*vi*) Deductions;

(*vii*) Computation of net weekly wages paid to each employee;

(*viii*) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(*ix*) Apprenticeship and trainee registration and ratios; and

(*x*) Computation of fringe benefits payments.

(*3*) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(*i*) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(*ii*) Follow the form used by the contractor.

(*iii*) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(*iv*) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least the—

(A) Basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in 222.406–8(a)(ii);

(F) Concluding statement concerning—

(*1*) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(*2*) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(*3*) The amount of funds withheld from the contractor; and

(*4*) Other violations found.

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(*1*) Complaint letter;

(*2*) Contract wage determination;

(*3*) Preconstruction letter and memorandum of preconstruction conference;

(*4*) Payrolls and statements indicating violations;

(*5*) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(*6*) Employee interview statements;

(*7*) Foreman interview statements;

(*8*) Statements of others interviewed, including Government personnel;

(*9*) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(*10*) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(*11*) Receipts and cancelled checks.

(c) *Notification to the contractor.*

(4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA). The notification shall inform the contractor that—

(*1*) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(*2*) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) *Contracting officer's report.* (1) In accordance with agency procedures, the contracting officer shall forward a detailed enforcement report or summary report in duplicate. These reports shall include at least the following—

(A) SF 1446, Labor Standards Investigation Summary Sheet;

(B) Contracting officer's findings;

(C) Statement as to the disposition of any contractor rebuttal to the findings;

(D) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(E) Statement as to the disposition of funds available;

(F) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(G) When applicable the following exhibits—

(*1*) Investigator's report;

(*2*) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings;

(*3*) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection;

(*4*) Evidence of the contractor's payment of restitution or liquidated damages. (Copies of receipts, canceled checks, or supplemental payrolls); and

(*5*) Letter from the contractor requesting relief from the liquidated damage provisions of the CWHSSA.

222.406–9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon or CWHSSA wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.*

(A) The agency head may adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406–13 Semiannual enforcement reports.

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA—

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received;

(5) Number of investigations conducted;

(6) Number of contractors/subcontractors found in violation;

(7) Amount of wage restitution found due under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(8) Number of employees due wage restitution under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(9) Amount of liquidated damages assessed under the CWHSSA—

(i) Total amount

(ii) Number of contracts involved;

(10) Number of employees and amount paid/withheld under—

(i) Davis-Bacon Act

(ii) CWHSSA

(iii) Copeland Act; and

(11) Preconstruction activities—

(i) Number of compliance checks performed

(ii) Preconstruction letters sent.

222.407 Contract clauses.

In contracts with a State or political subdivision, use the contract clauses prescribed in FAR 22.407, but preface these clauses with the following—

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts under this contract with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604–2 Regulatory exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

222.608 Procedures.

222.608–4 Award pending final determination.

(b)(1) The head of the contracting activity is the approval authority for the contracting officer's certification.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804–2 Construction.

(b) Contracting officers forward requests for instructions directly to the servicing Office of Federal Contract Compliance Programs (OFCCP) regional office (see FAR 22.609).

222.805 Procedures.

(a)(2) See FAR 22.609 for a list of OFCCP regional offices.

222.806 Inquiries.

(b) Refer inquiries through the labor advisor.

222.807 Exemptions.

(c) Submit the request for exemption with a justification through contracting channels to the labor advisor who will forward them to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, OFCCP of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP for action.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003–1 General.

For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402–70.

222.1003–7 Questions concerning applicability of the Act.

Contracting officers may contact the labor advisor by telephone for informal advice. Submit requests for formal determinations as to the Act's applicability to the labor advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008–2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and nondirectory) expected to be utilized.

(2)(A) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(B) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. Where a previously conformed classification is not included in the Directory, attach the job description to the SF 98a.

222.1008–7 Required time of submission of notice.

(d) Submit requests for immediate wage determination responses for emergency acquisitions through the labor advisor. If the request is justified, the labor advisor will contact Department of Labor headquarters officials.

222.1014 Delay of acquisition dates over 60 days.

Send update requests in writing directly to the Wage and Hour Division and provide a copy to the labor advisor. The update request shall—

(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1303(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(b).

222.1306 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question 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.

222.1308 Contract clauses.

(a)(1) Use of the clause at FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410d.

[58 FR 28466, May 13, 1993]

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor

will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR 22.609 for a listing of Department of Labor regional/area offices); and

(2) Notify the complainant of such referral. The contractor in question 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.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.

(a) This subpart implements section 8078 of the 1986 Defense Appropriations Act, Public Law 99–190, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within the states of Alaska or Hawaii; and

(2) When the unemployment rate in the state is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

[56 FR 36358, July 31, 1991, as amended at 57 FR 14993, Apr. 23, 1992]

222.7001 General.

A contractor awarded a contract subject to this subpart must employ for the purpose of performing that portion of the contract work within the state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

222.7002 Waivers.

Waivers may be granted, in the interest of national security, at a level no lower than the Assistant Secretary of any department.

222.7003 Contract clause.

Use the clause at 252.222–7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart.

Subpart 222.71—Right of First Refusal of Employment

SOURCE: 57 FR 52593, Nov. 4, 1992, unless otherwise noted.

222.7100 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions arising from closure of military installations.

222.7101 Policy.

(a) DoD policy is to minimize the adverse impact on civil service employees affected by the closure of military installations. One means of implementing this policy is to give employees adversely affected by closure of a military installation the right of first refusal for jobs created by award of contracts arising from the closure effort that the employee is qualified to fill.

(b) Closure efforts include the acquisitions for preparing the installation for closure (such as environmental restoration and utilities modification) and maintaining the property after closure (such as security and fire prevention services).

222.7102 Contract clause

Use the clause at 252.222–7001, Right of First Refusal of Employment—Closure of Military Installations, in all solicitations and contracts arising from the closure of the military installation where the contract will be performed.

Subpart 222.72—Compliance with Labor Laws of Foreign Governments

222.7200 Scope of subpart.

This subpart prescribes contract clauses, with respect to labor laws of foreign governments, for use when contracting for services or construction within a foreign country.

[62 FR 34122, June 24, 1997]

222.7201 Contract clauses.

(a) Use the clause at 252.222–7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States, its possessions, and Puerto Rico.

(b) Use the clause at 252.222–7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Use the clause at 252.222–7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction to be performed in Spain.

[62 FR 34122, June 24, 1997]

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

(c) The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense (Acquisition and Technology).

[60 FR 61596, Nov. 30, 1995]