

22.1003-7

(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 Act. 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.

48 CFR Ch. 1 (10-1-11 Edition)

(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]

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act 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.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, 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 Act (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]

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 Act of 1965, in solicitations

and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Act 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 Act 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 Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification;

(B) 52.222-52, Exemption from Application of the Service Contract Act 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)(iii) or (iv) 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 Act does not apply to the contract. (In such case, insert the clause at 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or 52.222-53, Exemption from Application of the Service Contract Act 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 Act 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 Act—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 Act of 1965, 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 Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts 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 Act—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 Act of 1965, 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 Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor

22.1007

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 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 Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification, in solicitations that—

(i) Include the clause at 52.222-41, Service Contract Act of 1965; and

(ii) The contract may be exempt from the Service Contract Act 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 Act 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)(iii) 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 Act 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 Act to Contracts for Certain Services—Certification, in solicitations that—

(A) Include the clause at 52.222-41, Service Contract Act of 1965; and

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

(ii) When resoliciting in accordance with 22.1003-4(d)(3)(iii), amend the so-

48 CFR Ch. 1 (10-1-11 Edition)

licitation 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 Act 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)(iv) 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 Act does not apply.

(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—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]

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]