

CHANGE REQUEST COVER SHEET

Change Request Number: 11-03

Date Received: 10/15/2010

Title: Withholding from or Suspension of Contract Payments

Name: Vickey Kirkpatrick

Phone: 202-267-8351

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.6.2

Summary of Change: To revise language regarding the use of social security numbers for construction contract payroll records, i.e., withholding or suspension of contract payments.

Reason for Change: To change the language requiring the use of an individual's entire social security number to be listed when processing restitutions. The language will include an updated requirement allowing the use of the last four digits of an individual's social security number.

Development, Review, and/or Concurrence: Procurement Policy Team

Target Audience: FAA Contracting Workforce and Program Offices

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: Review and Comment

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 6 : Procedures for Construction Contracts [[Old Content](#)][[New Content](#)] [[RedLine Content](#)]

SECTIONS EDITED:

Section 6 : Procedures for Construction Contracts

Old Content: Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 6 : Procedures for Construction Contracts

a. *Davis-Bacon Act Wage Determinations.*

(1) DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage 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.

(a) *General Wage Determination.* General wage determinations contain prevailing wage rates for the types of construction designated in the determination, and are used in contracts performed within a specified geographical area. They contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by DOL. Once incorporated in a contract, a wage determination normally remains effective for the life of the contract.

Modifications which may be issued do not apply to ongoing contracts unless specifically directed by DOL. General wage determinations are available on-line from the Department of Labor (DOL) at www.wdol.gov. This website provides a single location for COs to use in obtaining current or archived Davis-Bacon Act wage determinations.

(2) *Project Wage Determination.* When a general wage determination does not exist for a particular area, DOL will issue a project wage determination if requested by the CO using a Standard Form (SF) 308. A project wage determination is effective for 180 days and applies to specific contracts within that time period. Once incorporated into the contract, a project wage determination remains effective for the life of the contract unless directed otherwise by DOL.

b. *General Requirements.*

(1) The CO should ensure that only the appropriate wage determinations are incorporated in screening information requests (SIR's) and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO should indicate the work to which each wage determination or part thereof applies.

(2) If the wage determination contains more than one rate schedule, the CO should either include only the rate schedules that apply to the specific 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 should be applied.

(3) The CO should use the following general guidelines in selecting the proper schedule(s) of wage rates:

(a) *Building* construction is generally the construction of sheltered enclosures with walk-in access, 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.

(b) *Residential* construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four 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.

(c) *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.

(d) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Construction of FAA substations, transmission lines and access roads. 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.).

(e) 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, the CO should contact DOL for guidance (further examples are contained in DOL Memoranda Numbers 130 and 131).

c. Requesting Wage Determinations.

(1) *General Wage Determination.* The CO may incorporate general wage determinations without notifying DOL.

(2) *Project Wage Determination.* To request a project wage determination, the CO will utilize the Department of Labor's (DOL) wage determination website at www.wdol.gov. If a wage determination does not exist for a given area, the CO may request a project wage determination by submitting a Standard Form (SF) 308 to DOL.

d. The published wage determinations, with their most current modification received by the CO, will be incorporated into applicable SIR's. Incorporation by reference is not permitted.

e. *SIR's Issued without Wage Determinations.* The CO should include a notice in the SIR that wage determinations have been requested and that the SIR will be amended to incorporate any wage determination when received.

f. *Modifications of Wage Determinations.* If the CO has a wage determination for a particular acquisition, wage determination modifications received by the CO or published in the Federal Register less than 10 days prior to receipt of offers are not required to be incorporated if the CO determines there is not reasonable time to incorporate the modification. Modifications received after award are not effective and need not be incorporated in the contract.

g. *Award of Contract Without Required Wage Determination.* If DOL discovers after award that the wrong wage determination or rate schedule was specified, the CO will modify the contract to incorporate the corrected wage determination (retroactive to the date of award), or terminate the contract. If appropriate, the CO should equitably adjust the contract price.

h. *Posting Wage Determinations and Notice.* The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place. The CO should furnish to the contractor DOL Form WH-1321, "Notice to Employees Working on Federal and Federally Financed Construction Projects," to be posted with the wage rates. The poster should include the name, address, and telephone number of the FAA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

i. *Wage Determination Appeals.* The Secretary of Labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. The FAA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by DOL has been sought pursuant to 29 CFR 1.8 and denied.

j. *Satisfying Wage, Fringe Benefit, and Overtime Requirements.*

(1) Contractors are required to pay laborers and mechanics at least the combined hourly wage and fringe benefit amount specified in the wage determinations. In computing wages paid to laborers or mechanics, the contractor may include only the amounts paid in cash and contributions to bona fide benefit plans.

(2) Laborer and mechanic's overtime pay is based on 1 1/2 times the basic hourly rate of pay. When computing the basic hourly rate of pay, the contractor must use the hourly rate in the wage determination or the employee's actual rate, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contribution to fringe benefits.

k. *Additional Classifications.*

(1) 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 CO will require the contractor submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any fringe benefits payments. Upon receipt of the SF 1444, the CO should review the request to determine whether it meets the following criteria:

- (a) 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.
- (b) The classification is utilized in the area by the construction industry.
- (c) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(2) If the criteria in subparagraphs (a) - (c) above 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 classification, and the CO approves, the CO will submit a report (including a copy of SF 1444) of that action to DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

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

(4) Within 30 days of receipt of the report, DOL, Wage and Hour Division, will advise the CO of appropriate action, or will notify the CO that additional time is necessary.

(5) Upon receipt of DOL's decision, the CO should 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 "Davis Bacon Act," 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.

l. *Apprentices and Trainees.* The CO, or Contracting Officer's Technical Representative (COTR), will review the contractor's employment and payment records for apprentices and trainees to ensure that the contractor has complied with the clause "Apprentices and Trainees." If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause, the CO will reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

m. *Subcontracts.* In accordance with the clause "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. The CO will provide a copy of the SF 1413 to the prime contractor at contract award.

n. *Payrolls and Statements.*

(1) *Submission.* In accordance with the clause "Payrolls and Basic Records," the contractor must submit, within 7 calendar days after the regular payroll week covered, for the contractor and each subcontractor: (a) copies of weekly payrolls applicable to the contract, and (b) weekly payroll statements of compliance. The contractor may use DOL Form WH-347, "Payroll (For Contractor's Optional Use)," or a similar form and identical representation.

(2) *Withholding for Non-submission.* If the contractors fail to submit copies of its, or its subcontractor's payrolls promptly, the CO will withhold from any payment due to the contractor, approval of an amount that the CO considered necessary to protect the FAA's interests and the employees.

(3) *Examination.* The CO, or COTR, will examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to:

- (a) The correctness of classifications and rates;
- (b) Fringe benefits payments;
- (c) Hours worked;
- (d) Deductions; and
- (e) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

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

(5) *Preservation.* The FAA will retain payrolls and statements of compliance for 3 years after completion of the contract and make them available for DOL if requested. Payrolls will not be returned to the contractor.

(6) *Disclosure Of Payroll Records.* Contractor payroll records in FAA'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 FAA may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

o. Site Compliance Checking.

(1) The CO or COTR will investigate as necessary to ensure compliance with the labor standards requirements of the contract.

(2) *Regular Compliance Checks.* Compliance checks should include the following:

(a) Employee interviews to determine correctness of classifications and rates of pay, fringe benefits payments, and hours worked (see SF 1445).

(b) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(c) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls submitted are on time and complete, as well as in compliance with contract requirements.

(d) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

p. Investigations. The FAA is responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, DOL may conduct an investigation or request the FAA to do so.

(1) The FAA should conduct an investigation if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. The investigation should include all aspects of the contractor's compliance with contract labor standards requirements, and should not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, should not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request

from, DOL Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of DOL.

(2) The CO will review the investigation report upon receipt and make preliminary findings regarding the contractor. Adverse findings normally that are not supported by other evidence will not normally be based solely on employee statements that have not been authorized for disclosure by the employee and will require more corroborating evidence than unauthorized employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(3) *Notification to the Contractor.* The CO will take the following actions upon completing the review:

(a) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(b) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. Also, the CO will not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of that employee.

(c) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings will be considered final.

(d) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the CO to be due, whether or not the violation is considered willful. If the request includes liquidated damages, it will also contain a written statement that the contractor may within 60 days request relief from such assessment.

(4) *Contracting Officer's Report.* After implementing those actions prescribed above, the CO will prepare and forward a report of violations, including findings and supporting evidence, to DOL. Standard Form 1446, Labor Standards Investigation Summary Sheet, will be completed and attached as the first page of the report. The CO will forward a copy of the report to DOL within 60 days if: (a) underpayments exceeded \$1,000; (b) violations were willful or aggravated; (c) no restitution was made; or (d) future

compliance has not been assured. If violations are willful and criminal, the report should be forwarded to the Department of Justice and DOL.

q. *Withholding from or Suspension of Contract Payments.*

(1) *Suspension of Contract Payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the FAA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the CO will forward to Accounts Payable Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The CO should include with the SF 1093 a listing of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims, if feasible; and a brief statement of the reason for requiring restitution. Also, the CO should indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of their claims. The accounting office will submit the SF 1093 with attached additional data, and effect payment to the Comptroller General (Claims Division) in accordance with their procedures.

(3) *Returning of Withheld Funds to Contractor.* When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds will be paid the contractor in an expeditious manner.

(4) *Limitation on Forwarding or Returning Funds.* If the withholding was requested by DOL or if the findings are disputed, the CO should not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

r. *Disposition of Disputes Concerning Contract Labor Standards Enforcement.*

(1) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include:

(a) Misclassification of workers;

(b) Hours of work;

(c) Wage rates and payment;

(d) Payment of overtime;

(e) Withholding practices; and

(f) The applicability of the labor standards requirements under varying circumstances.

(2) Generally, these differences are settled administratively at the project level by the FAA. If necessary, these differences may be settled with assistance from DOL.

(3) When requesting the contractor to take corrective action in labor violation cases, the CO should inform the contractor of the following:

(a) Disputes concerning the labor standards requirements of the contract are to be resolved by DOL, not by the Disputes clause of the contract.

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

(4) The CO should promptly transmit the CO's findings and the contractor's statement to DOL, Wage and Hour Division.

(5) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the FAA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in DOL regulations.

(6) DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

s. Contract Termination.

If a contract or subcontract is terminated for violation of the labor standards clauses, the CO should submit a report to DOL, Wage and Hour Division, DOL, and the Comptroller General. The report will include:

(1) The number of the terminated contract;

(2) The name and address of the terminated contractor or subcontractor;

(3) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(4) The amount and number of the replacement contract, if any; and

t. *Semi-Annual Enforcement Reports.* A semi-annual report on compliance with and enforcement of construction labor standards is required by DOL within 30 days after the reporting periods of October 1 through March 31 and April 1 through September 30 of each year.

New Content: Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 6 : Procedures for Construction Contracts

a. *Davis-Bacon Act Wage Determinations.*

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(3) The CO should use the following general guidelines in selecting the proper schedule(s) of wage rates:

(a) *Building* construction is generally the construction of sheltered enclosures with walk-in access, 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.

(b) *Residential* construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four 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.

(c) *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.

(d) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Construction of FAA substations, transmission lines and access roads. 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.).

(e) 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, the CO should contact DOL for guidance (further examples are contained in DOL Memoranda Numbers 130 and 131).

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includes employee contributions to fringe benefits, but excludes the contractor's contribution to fringe benefits.

k. *Additional Classifications.*

(1) 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 CO will require the contractor submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any fringe benefits payments. Upon receipt of the SF 1444, the CO should review the request to determine whether it meets the following criteria:

- (a) 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.
- (b) The classification is utilized in the area by the construction industry.
- (c) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(2) If the criteria in subparagraphs (a) - (c) above 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 classification, and the CO approves, the CO will submit a report (including a copy of SF 1444) of that action to DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

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

(4) Within 30 days of receipt of the report, DOL, Wage and Hour Division, will advise the CO of appropriate action, or will notify the CO that additional time is necessary.

(5) Upon receipt of DOL's decision, the CO should 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 "Davis Bacon Act," 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.

l. *Apprentices and Trainees.* The CO, or Contracting Officer's Technical Representative (COTR), will review the contractor's employment and payment records for apprentices and

trainees to ensure that the contractor has complied with the clause "Apprentices and Trainees." If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause, the CO will reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

m. *Subcontracts.* In accordance with the clause "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. The CO will provide a copy of the SF 1413 to the prime contractor at contract award.

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(3) *Examination.* The CO, or COTR, will examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to:

- (a) The correctness of classifications and rates;
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(a) Employee interviews to determine correctness of classifications and rates of pay, fringe benefits payments, and hours worked (see SF 1445).

(b) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(c) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls submitted are on time and complete, as well as in compliance with contract requirements.

(d) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

p. *Investigations.* The FAA is responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, DOL may conduct an investigation or request the FAA to do so.

(1) The FAA should conduct an investigation if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. The investigation should include all aspects of the contractor's compliance with contract labor standards requirements, and should not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, should not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, DOL Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any

manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of DOL.

(2) The CO will review the investigation report upon receipt and make preliminary findings regarding the contractor. Adverse findings normally that are not supported by other evidence will not normally be based solely on employee statements that have not been authorized for disclosure by the employee and will require more corroborating evidence than unauthorized employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(3) *Notification to the Contractor.* The CO will take the following actions upon completing the review:

(a) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(b) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. Also, the CO will not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of that employee.

(c) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings will be considered final.

(d) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the CO to be due, whether or not the violation is considered willful. If the request includes liquidated damages, it will also contain a written statement that the contractor may within 60 days request relief from such assessment.

(4) *Contracting Officer's Report.* After implementing those actions prescribed above, the CO will prepare and forward a report of violations, including findings and supporting evidence, to DOL. Standard Form 1446, Labor Standards Investigation Summary Sheet, will be completed and attached as the first page of the report. The CO will forward a copy of the report to DOL within 60 days if: (a) underpayments exceeded \$1,000; (b) violations were willful or aggravated; (c) no restitution was made; or (d) future compliance has not been assured. If violations are willful and criminal, the report should be forwarded to the Department of Justice and DOL.

q. *Withholding from or Suspension of Contract Payments.*

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(1) *Suspension of Contract Payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the FAA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the CO will forward to Accounts Payable Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The CO should include with the SF 1093 a listing of the name, last four digits of the social security number, and last known address of each affected employee; the amount due each employee; employee claims, if feasible; and a brief statement of the reason for requiring restitution. Also, the CO should indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of their claims. The accounting office will submit the SF 1093 with attached additional data, and effect payment to the Comptroller General (Claims Division) in accordance with their procedures.

(3) *Returning of Withheld Funds to Contractor.* When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds will be paid the contractor in an expeditious manner.

(4) *Limitation on Forwarding or Returning Funds.* If the withholding was requested by DOL or if the findings are disputed, the CO should not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

r. *Disposition of Disputes Concerning Contract Labor Standards Enforcement.*

(1) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include:

- (a) Misclassification of workers;
- (b) Hours of work;
- (c) Wage rates and payment;
- (d) Payment of overtime;
- (e) Withholding practices; and

(f) The applicability of the labor standards requirements under varying circumstances.

(2) Generally, these differences are settled administratively at the project level by the FAA. If necessary, these differences may be settled with assistance from DOL.

(3) When requesting the contractor to take corrective action in labor violation cases, the CO should inform the contractor of the following:

(a) Disputes concerning the labor standards requirements of the contract are to be resolved by DOL, not by the Disputes clause of the contract.

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

(4) The CO should promptly transmit the CO's findings and the contractor's statement to DOL, Wage and Hour Division.

(5) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the FAA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in DOL regulations.

(6) DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

s. Contract Termination.

If a contract or subcontract is terminated for violation of the labor standards clauses, the CO should submit a report to DOL, Wage and Hour Division, DOL, and the Comptroller General. The report will include:

(1) The number of the terminated contract;

(2) The name and address of the terminated contractor or subcontractor;

(3) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(4) The amount and number of the replacement contract, if any; and

t. *Semi-Annual Enforcement Reports.* A semi-annual report on compliance with and enforcement of construction labor standards is required by DOL within 30 days after the reporting periods of October 1 through March 31 and April 1 through September 30 of each year.

Red Line Content: Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 6 : Procedures for Construction Contracts

a. *Davis-Bacon Act Wage Determinations.*

(1) DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage 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.

(a) *General Wage Determination.* General wage determinations contain prevailing wage rates for the types of construction designated in the determination, and are used in contracts performed within a specified geographical area. They contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by DOL. Once incorporated in a contract, a wage determination normally remains effective for the life of the contract.

Modifications which may be issued do not apply to ongoing contracts unless specifically directed by DOL. General wage determinations are available on-line from the Department of Labor (DOL) at www.wdol.gov. This website provides a single location for COs to use in obtaining current or archived Davis-Bacon Act wage determinations.

(2) *Project Wage Determination.* When a general wage determination does not exist for a particular area, DOL will issue a project wage determination if requested by the CO using a Standard Form (SF) 308. A project wage determination is effective for 180 days and applies to specific contracts within that time period. Once incorporated into the contract, a project wage determination remains effective for the life of the contract unless directed otherwise by DOL.

b. *General Requirements.*

(1) The CO should ensure that only the appropriate wage determinations are incorporated in screening information requests (SIR's) and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO should indicate the work to which each wage determination or part thereof applies.

(2) If the wage determination contains more than one rate schedule, the CO should either include only the rate schedules that apply to the specific 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 should be applied.

(3) The CO should use the following general guidelines in selecting the proper schedule(s) of wage rates:

(a) *Building* construction is generally the construction of sheltered enclosures with walk-in access, 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.

(b) *Residential* construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four 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.

(c) *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.

(d) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Construction of FAA substations, transmission lines and access roads. 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.).

(e) 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, the CO should contact DOL for guidance (further examples are contained in DOL Memoranda Numbers 130 and 131).

c. Requesting Wage Determinations.

(1) *General Wage Determination.* The CO may incorporate general wage determinations without notifying DOL.

(2) *Project Wage Determination.* To request a project wage determination, the CO will utilize the Department of Labor's (DOL) wage determination website at www.wdol.gov.

If a wage determination does not exist for a given area, the CO may request a project wage determination by submitting a Standard Form (SF) 308 to DOL.

d. The published wage determinations, with their most current modification received by the CO, will be incorporated into applicable SIR's. Incorporation by reference is not permitted.

e. *SIR's Issued without Wage Determinations.* The CO should include a notice in the SIR that wage determinations have been requested and that the SIR will be amended to incorporate any wage determination when received.

f. *Modifications of Wage Determinations.* If the CO has a wage determination for a particular acquisition, wage determination modifications received by the CO or published in the Federal Register less than 10 days prior to receipt of offers are not required to be incorporated if the CO determines there is not reasonable time to incorporate the modification. Modifications received after award are not effective and need not be incorporated in the contract.

g. *Award of Contract Without Required Wage Determination.* If DOL discovers after award that the wrong wage determination or rate schedule was specified, the CO will modify the contract to incorporate the corrected wage determination (retroactive to the date of award), or terminate the contract. If appropriate, the CO should equitably adjust the contract price.

h. *Posting Wage Determinations and Notice.* The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place. The CO should furnish to the contractor DOL Form WH-1321, "Notice to Employees Working on Federal and Federally Financed Construction Projects," to be posted with the wage rates. The poster should include the name, address, and telephone number of the FAA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

i. *Wage Determination Appeals.* The Secretary of Labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. The FAA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by DOL has been sought pursuant to 29 CFR 1.8 and denied.

j. *Satisfying Wage, Fringe Benefit, and Overtime Requirements.*

(1) Contractors are required to pay laborers and mechanics at least the combined hourly wage and fringe benefit amount specified in the wage determinations. In computing wages paid to laborers or mechanics, the contractor may include only the amounts paid in cash and contributions to bona fide benefit plans.

(2) Laborer and mechanic's overtime pay is based on 1 1/2 times the basic hourly rate of pay. When computing the basic hourly rate of pay, the contractor must use the hourly rate in the wage determination or the employee's actual rate, if higher. The basic rate of pay

includes employee contributions to fringe benefits, but excludes the contractor's contribution to fringe benefits.

k. *Additional Classifications.*

(1) 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 CO will require the contractor submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any fringe benefits payments. Upon receipt of the SF 1444, the CO should review the request to determine whether it meets the following criteria:

- (a) 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.
- (b) The classification is utilized in the area by the construction industry.
- (c) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(2) If the criteria in subparagraphs (a) - (c) above 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 classification, and the CO approves, the CO will submit a report (including a copy of SF 1444) of that action to DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

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

(4) Within 30 days of receipt of the report, DOL, Wage and Hour Division, will advise the CO of appropriate action, or will notify the CO that additional time is necessary.

(5) Upon receipt of DOL's decision, the CO should 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 "Davis Bacon Act," 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.

l. *Apprentices and Trainees.* The CO, or Contracting Officer's Technical Representative (COTR), will review the contractor's employment and payment records for apprentices and

trainees to ensure that the contractor has complied with the clause "Apprentices and Trainees." If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause, the CO will reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

m. *Subcontracts.* In accordance with the clause "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. The CO will provide a copy of the SF 1413 to the prime contractor at contract award.

n. *Payrolls and Statements.*

(1) *Submission.* In accordance with the clause "Payrolls and Basic Records," the contractor must submit, within 7 calendar days after the regular payroll week covered, for the contractor and each subcontractor: (a) copies of weekly payrolls applicable to the contract, and (b) weekly payroll statements of compliance. The contractor may use DOL Form WH-347, "Payroll (For Contractor's Optional Use)," or a similar form and identical representation.

(2) *Withholding for Non-submission.* If the contractors fail to submit copies of its, or its subcontractor's payrolls promptly, the CO will withhold from any payment due to the contractor, approval of an amount that the CO considered necessary to protect the FAA's interests and the employees.

(3) *Examination.* The CO, or COTR, will examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to:

- (a) The correctness of classifications and rates;
- (b) Fringe benefits payments;
- (c) Hours worked;
- (d) Deductions; and
- (e) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

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

(5) *Preservation.* The FAA will retain payrolls and statements of compliance for 3 years after completion of the contract and make them available for DOL if requested. Payrolls will not be returned to the contractor.

(6) *Disclosure Of Payroll Records.* Contractor payroll records in FAA'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 FAA may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

o. *Site Compliance Checking.*

(1) The CO or COTR will investigate as necessary to ensure compliance with the labor standards requirements of the contract.

(2) *Regular Compliance Checks.* Compliance checks should include the following:

(a) Employee interviews to determine correctness of classifications and rates of pay, fringe benefits payments, and hours worked (see SF 1445).

(b) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(c) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls submitted are on time and complete, as well as in compliance with contract requirements.

(d) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

p. *Investigations.* The FAA is responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, DOL may conduct an investigation or request the FAA to do so.

(1) The FAA should conduct an investigation if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. The investigation should include all aspects of the contractor's compliance with contract labor standards requirements, and should not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, should not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, DOL Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any

manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of DOL.

(2) The CO will review the investigation report upon receipt and make preliminary findings regarding the contractor. Adverse findings normally that are not supported by other evidence will not normally be based solely on employee statements that have not been authorized for disclosure by the employee and will require more corroborating evidence than unauthorized employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(3) *Notification to the Contractor.* The CO will take the following actions upon completing the review:

(a) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(b) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. Also, the CO will not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of that employee.

(c) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings will be considered final.

(d) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the CO to be due, whether or not the violation is considered willful. If the request includes liquidated damages, it will also contain a written statement that the contractor may within 60 days request relief from such assessment.

(4) *Contracting Officer's Report.* After implementing those actions prescribed above, the CO will prepare and forward a report of violations, including findings and supporting evidence, to DOL. Standard Form 1446, Labor Standards Investigation Summary Sheet, will be completed and attached as the first page of the report. The CO will forward a copy of the report to DOL within 60 days if: (a) underpayments exceeded \$1,000; (b) violations were willful or aggravated; (c) no restitution was made; or (d) future compliance has not been assured. If violations are willful and criminal, the report should be forwarded to the Department of Justice and DOL.

q. *Withholding from or Suspension of Contract Payments.*

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(1) *Suspension of Contract Payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the FAA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the CO will forward to Accounts Payable Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The CO should include with the SF 1093 a listing of the name, *last four digits of the* social security number, and last known address of each affected employee; the amount due each employee; employee claims, if feasible; and a brief statement of the reason for requiring restitution. Also, the CO should indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of their claims. The accounting office will submit the SF 1093 with attached additional data, and effect payment to the Comptroller General (Claims Division) in accordance with their procedures.

(3) *Returning of Withheld Funds to Contractor.* When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds will be paid the contractor in an expeditious manner.

(4) *Limitation on Forwarding or Returning Funds.* If the withholding was requested by DOL or if the findings are disputed, the CO should not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

r. *Disposition of Disputes Concerning Contract Labor Standards Enforcement.*

(1) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include:

- (a) Misclassification of workers;
- (b) Hours of work;
- (c) Wage rates and payment;
- (d) Payment of overtime;
- (e) Withholding practices; and

(f) The applicability of the labor standards requirements under varying circumstances.

(2) Generally, these differences are settled administratively at the project level by the FAA. If necessary, these differences may be settled with assistance from DOL.

(3) When requesting the contractor to take corrective action in labor violation cases, the CO should inform the contractor of the following:

(a) Disputes concerning the labor standards requirements of the contract are to be resolved by DOL, not by the Disputes clause of the contract.

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

(4) The CO should promptly transmit the CO's findings and the contractor's statement to DOL, Wage and Hour Division.

(5) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the FAA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in DOL regulations.

(6) DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

s. Contract Termination.

If a contract or subcontract is terminated for violation of the labor standards clauses, the CO should submit a report to DOL, Wage and Hour Division, DOL, and the Comptroller General. The report will include:

(1) The number of the terminated contract;

(2) The name and address of the terminated contractor or subcontractor;

(3) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(4) The amount and number of the replacement contract, if any; and

t. *Semi-Annual Enforcement Reports.* A semi-annual report on compliance with and enforcement of construction labor standards is required by DOL within 30 days after the reporting periods of October 1 through March 31 and April 1 through September 30 of each year.
