

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

(i) If the new determination changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404-1. Otherwise the contracting officer shall award the contract and incorporate the new determination to be effective on the date of contract award. The contracting officer shall equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates.

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

(c) The following procedure applies when contracting by negotiation:

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

(2) The contracting officer need not delay opening and reviewing proposals

or discussing them with the offerors while a new determination is being obtained. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire before receipt and full processing of the new determination.

(3) If the new determination changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that submitted proposals if the closing date has passed. All offerors to whom wage rate information has been furnished shall be given reasonable opportunity to amend their proposals.

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

22.404-6 Modifications of wage determinations.

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

(2) All project wage determination modifications expire on the same day as the original determination. The need to include a modification of a project wage determination in a solicitation is determined by the time of receipt of the modification by the contracting agency. Therefore, the contracting agency must annotate the modification of the project wage determination with the date and time immediately upon receipt.

(3) The need for inclusion of the modification of a general wage determination in a solicitation is determined by the publication date of the notice in the FEDERAL REGISTER, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs

first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.)

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

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

(i) It is received by the contracting agency, or notice of the modification is published in the FEDERAL REGISTER, 10 or more calendar days before the date of bid opening, or

(ii) It is received by the contracting agency, or notice of the modification is published in the FEDERAL REGISTER, less than 10 calendar days before the date of bid opening, unless the contracting officer finds that there is not reasonable time available before bid opening to notify the prospective bidders. (If the contracting officer finds that there is not reasonable time to notify bidders, a written report of the finding shall be placed in the contract file and shall be made available to the Department of Labor upon request.)

(2) All written actions modifying wage determinations received by the contracting agency after bid opening, or modifications to general wage determinations, notices of which are published in the FEDERAL REGISTER after bid opening, shall not be effective and shall not be included in the solicitation (but see paragraph (b)(6) of this section).

(3) If an effective modification is received by the contracting officer before bid opening, the contracting officer shall postpone the bid opening, if necessary, to allow a reasonable time to amend the solicitation to incorporate the modification and permit bidders to amend their bids. If the modification does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the modification.

(4) If an effective modification is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in 22.404-5(b)(2)(i) or (ii).

(5) If an effective modification is received by the contracting officer after award, the contracting officer shall

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

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination, notice of which is published in the FEDERAL REGISTER before award, shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An agency head or a designee may request such an extension from the Administrator. The request must be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The contracting officer shall follow the procedures in 22.404-5(b)(2).

(c) The following applies when contracting by negotiation:

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations notices of which are published in the FEDERAL REGISTER before award, shall be effective.

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

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

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

(1) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of

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Labor prior to exercise of the option, or within 45 days after submission of a wage determination request (22.404-3(c)), whichever is later; or

(ii) The Department of Labor publishes notice of modifications to general wage determinations in the FEDERAL REGISTER before exercise of the option.

(2) If the contracting officer receives an effective modified wage determination either before or after execution of the contract modification to exercise the option, the contracting officer must modify the contract to incorporate the modified wage determination, and any changed wage rates, effective as of the date that the option to extend was effective.

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

22.404-7 Correction of wage determinations containing clerical errors.

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

[66 FR 53480, Oct. 22, 2001]

22.404-8 Notification of improper wage determination before award.

(a) Written notification by the Department of Labor received by the contracting officer prior to award that (1) a solicitation includes the wrong wage determination or the wrong rate schedule or (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to 22.404-6.

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

(1) If the notification reaches the contracting officer before bid opening, the contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to (i) obtain the appropriate determination if a new wage determination is required, (ii) amend the solicitation to incorporate the determination (or rate schedule), and (iii) permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

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

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

22.404-9 Award of contract without required wage determination.

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

(b) The contracting officer shall—