

Federal Acquisition Regulation

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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 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.

(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

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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—

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

(2) Terminate the contract.

22.404-10 Posting wage determinations and notice.

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

they may submit complaints or raise questions concerning labor standards.

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

22.404-11 Wage determination appeals.

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

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

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

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

(b) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the contracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The wage determination will be effective for the complete period of performance of those task orders without further revision.

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

(1) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer