

Federal Acquisition Regulation

22.1006

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 Board of Service Contract Appeals (29 CFR part 8).

[54 FR 19816, May 8, 1989, as amended at 71 FR 36933, June 28, 2006]

22.1005 [Reserved]

22.1006 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over \$2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.

(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 service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, 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 (c) (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 service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, 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—

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Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor 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 clause at 52.222-48, Exemption from Application of Service Contract Act Provisions —Contractor Certification, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).

(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds \$2,500.

(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]

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—

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(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]

22.1008 Procedures for obtaining wage determinations.

[71 FR 36933, June 28, 2006]

22.1008-1 Obtaining wage determinations.

(a) Contracting officers may obtain most prevailing wage determinations using the WDOL website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the WDOL website, to request a wage determination directly from the Department of Labor. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the WDOL.

(d) Although the WDOL website provides assistance to the contracting