

222.101-70

cannot be moved with the consent of the parties, the agency head, on a non-delegable basis, may order removal of the items from the facility.

[56 FR 36358, July 31, 1991, as amended at 71 FR 18670, Apr. 12, 2006]

222.101-70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.

222.102-1 Policy.

(1) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the Department of Labor.

(2) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(3) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor. Any requests for variances or alternative means of compliance with OSHA requirements must be approved by the Occupational Safety and Health Ad-

48 CFR Ch. 2 (10-1-06 Edition)

ministration of the Department of Labor.

[71 FR 18670, Apr. 12, 2006]

222.103 Overtime.

222.103-4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards Act violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of \$500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of \$500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402-70 Installation support contracts.

(a) Apply both the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed \$2,000.

(b) SCA coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the SCA. Apply SCA clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) DBA coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building

structural repair, paving repairs, etc.) are subject to the DBA. Apply DBA clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either DBA painting/repairs or SCA maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the SCA. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is SCA maintenance or DBA painting/repairs, apply the following rules—

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the SCA.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the DBA by splitting individual tasks between orders or contracts.

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.