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T3.6.2 - Labor Laws Revised 4/2009

A Labor-Related Laws

1 General Revised 10/2020

a. While the FAA is not subject to the procurement-specific labor laws, we adhere to their spirit and intent within the parameters and flexibility of the AMS. Pertinent procurement-related labor laws are implemented in detailed regulations issued by Department of Labor (DOL) at Titles 29 and 41 of the Code of Federal Regulations (CFR) summarized as follows. Additional information is available on the DOL website.

(1) Davis-Bacon Act (29 CFR Parts 1, 5, 6, and 7)

(2) Copeland Anti-Kickback Act (29 CFR Parts 3, 5, 6, and 7)

(3) Contract Work Hours and Safety Standards Act (29 CFR Parts 5, 6, and 7)

(4) Walsh-Healey Public Contracts Act (41 CFR Chapter 50)

(5) Fair Labor Standards Act (29 CFR Chapter V, Parts 500-794)

(6) Service Contract Labor Standards (29 CFR Parts 4, 6, 8, 541, and 1925)

(7) Equal Employment Opportunity Act (41 CFR Chapter 60)

(8) Special Disabled and Vietnam Era Veterans (41 CFR Chapter 60)

(9) Employment of the Disabled (41 CFR Chapter 60)

(10) Occupational Safety and Health Act (29 CFR Parts 6 and 1925; 41 CFR Chapter 50)

b. DOL also issues "All Agency Memoranda" that interpret and explain various labor-related laws and regulations.

c. The Secretary of Labor, or designee if applicable, may make variations, tolerances, and exemptions from many regulatory requirements if such action is necessary and proper in the public interest or to prevent injustice and undue hardship. When applicable, DOL implementing regulations prescribe procedures for requesting variations, tolerances, and exemptions (exemption procedures are summarized in sections that follow).

d. The procurement team (Contracting Officer (CO), program official, legal counsel, and other supporting staff) ensures full and impartial administration of labor standards in contracts, and ensures contractors and subcontractors are informed of their obligations under labor standards. Procurement teams should:

(1) Maintain sound relations with industry and labor, and show no preference for

either union or non-union contractors.

(2) Remain impartial concerning any dispute between labor and contractor management and should not attempt conciliation, mediation, or arbitration of a labor dispute. Procurement teams should notify the agency responsible for conciliation, mediation, arbitration, e.g. the National Labor Relations Board, of a potential or actual labor dispute affecting, or threatening to affect, FAA programs.

(3) When appropriate, require contractors to notify the FAA of potential or actual labor disputes that could, or will, delay contract performance.

e. The CO should promptly refer, in writing, the following to the Department of Labor (DOL):

(1) Complaints alleging violations of labor-related laws;

(2) Apparent violations which have a significant impact;

(3) Any recurring violations; and

(4) Any failures to promptly correct identified violations.

f. The CO should seek advice from DOL when there is a question of whether a contractor's actions violate a labor-related law. Additionally, the CO should not directly discuss with the contractor any of its employee's complaints about possible labor law violations.

2 Labor Disputes Causing Strikes or Delays **Revised 7/2007**

(a) Labor disputes may cause strikes or delays which delay contract performance. Contractors are responsible for any reasonably avoidable delays in performance. However, a delay caused by a strike may be excusable if the strike was unforeseeable at time of award and the contractor or its subcontractors acted in good faith, diligently, and in a lawful manner to end the strike, such as seeking injunctive relief in court or engaging in private mediation or arbitration.

(b) Procurement teams should determine whether it is in the FAA's interest to remove products or materials from facilities in which the contractor is unable to deliver because of the strike. Two main factors to be considered are the criticality of need and the possibility/practicality of performance by another vendor. The CO, after consulting with legal counsel, must first notify the contractor in writing to request removal of the products or materials from the facility.

(1) If the contractor agrees, and FAA personnel will remove the items, FAA personnel should take extreme care to avoid use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(2) If the contractor disagrees, and the items are still critical, the CO should seek advice from legal counsel on the next action to be taken.

3 Overtime Added 7/2007

For cost-type (excluding incentive fee), time and materials, and labor hour contracts, the CO should determine the extent an offer is based on the payment of overtime and shift premiums, and negotiate contracts without the use of overtime or premiums. Overtime may be occasionally necessary to meet urgent or unforeseen program needs. In those instances, the CO should require the contractor to submit requests for overtime in advance of incurring the cost for overtime. The CO should review and approve contractor requests for overtime. Approval of overtime should be prospective; however, if justified by emergency circumstances, approval may be retroactive.

4 Contract Work Hours and Safety Standards Act Revised 1/2012

a. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applies to all contracts over $150,000 that may require or involve laborers or mechanics (the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include seaman). The Contract Work Hours and Safety Standards Act (CWHSSA) requires that laborers or mechanics cannot be required, or permitted, to work more than 40 hours in any workweek unless paid overtime at not less than 1 1/2 times the basic rate of pay.

b. *Liquidated Damages and Overtime Pay.*

(1) When overtime computations disclose under-payments, the contractor and any subcontractor is liable to the affected employee for the employee's unpaid wages and is also liable to the FAA for liquidated damages. The CO will compute liquidated damages for each affected employee in the sum of $10 for each calendar day that the employee was required, or permitted, to work in excess of the standard workweek of 40 hours without payment of overtime.

(2) If the contractor or any subcontractor fails or refuses to comply with overtime pay requirements and if the funds withheld by the FAA for labor standards violations are not sufficient to pay both the unpaid wages and the liquidated damages, the withheld funds will be used first to pay unpaid wages (or an equitable portion when the funds are not adequate for this purpose); and the balance, if any, used to pay liquidated damages.

(3) If the liquidated damages computation was incorrect or if the contractor or subcontractor inadvertently violated the provisions of the CHWSSA, the CO may:

(a) Make an adjustment in, or release the contractor or subcontractor from the liability for, liquidated damages of $500 or less; or

(b) Make a recommendation to DOL for an adjustment in, or release from, the liability when the liquidated damages are over $500.

(4) If the contractor is entitled to funds withheld or collected for liquidated damages, the CO should instruct the cognizant accounting office to pay the contractor the amount due. If the FAA is entitled to retain the funds, the CO should obtain instructions from the cognizant accounting office.

c. *Administration and Enforcement.* The same procedures and reports required for construction contract labor standards also apply to investigations of alleged violations of the CHWSSA when the contract is for other than a construction.

d. The CHWSSA does not apply to contracts:

(1) Valued at or below $150,000

(2) For commercial items;

(3) For the transportation or transmission of intelligence;

(4) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf Islands as defined by the Outer Shelf Lands Act;

(5) For work to be solely done in accordance with the Walsh-Healey Public Contracts Act;

(6) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(7) Exempt under regulations of the Secretary of Labor.

5 Construction Contracts/Davis-Bacon Act Revised 7/2019

a. *Davis-Bacon Act.* The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of $2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S., will require that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by DOL. For purposes of FAA procurement, the Davis Bacon Act will only apply to contracts greater than $10,000.

b. *Related Laws.*

(1) The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment. Contracts subject to the Copeland Act will include a clause requiring contractors and subcontractors to

comply with regulations issued by DOL. Additionally, the Copeland Act requires each contractor or subcontractor to furnish weekly statements of compliance regarding wages paid to each employee.

(2) The Contract Work Hours and Safety Standards Act applies to construction contracts involving laborers or mechanics.

c. *Applicability.*

(1) The Davis-Bacon Act and related laws apply to:

(a) Construction work to be performed by laborers and mechanics on a public building or public work site;

(b) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same or a separate contract;

(c) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site;

(d) Painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure; and

(e) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work (see DOL Memorandum No. 155, March 25, 1991).

(2) Davis-Bacon Act and related laws do not apply to:

(a) The manufacturing or fabrication of components or materials off the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;

(b) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development;

(c) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(d) Employees who work at the contractors' or

subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, when employees go to the work site and perform construction activities there, the requirements of the Davis-Bacon Act and related laws are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to and from the site of the work.

d. *Non-construction Contracts Involving Some Construction*.

(1) The Davis-Bacon Act and related laws apply to construction work to be performed as part of contracts other than construction (supply, service, research and development, etc.) if:

(a) The construction work is to be performed on a public building or public work;

(b) The contract contains a substantial amount of construction work exceeding $10,000 in value (the word "substantial" relates to the construction work considered on its own rather than merely a value comparison of the construction work as compared to the total value of the contract); and

(c) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The Davis-Bacon Act and related laws do not apply if:

(a) The construction work is incidental to the furnishing of supplies, equipment, or services; and

(b) The construction work is so merged with non-construction work, or so fragmented in terms of the locations or time spans within which it is to be performed, that it cannot be segregated as a separate contractual requirement.

(3) Consistent with Executive Order 13706 “Establishing Paid Sick Leave for Federal Contractors”, contracts subject to the Davis-Bacon Act must include AMS Clause 3.6.2-46 “Paid Sick Leave”.

e. *Definitions*.

(1) "Building" or "work," generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways,

parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging shoring rehabilitation and activation of plants, scaffolding , drilling, blasting, excavating, clearing and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" unless conducted in connection with and at the site of such building or work as described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(2) "Construction, alteration, or repair," means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment of the site of the building or work by persons employed by the contractor or subcontractor.

(3) "Laborers or mechanics" includes:

(a) Those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, as distinguished from mental or managerial;

(b) Apprentices, trainees, helpers, and in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards;

(c) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(d) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals. The terms exclude workers whose duties are primarily executive, supervisory, (except as provided in this section) administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics.

(4) "Public building" or "public work," means building or work, the construction, prosecution, completion, or repair of which, as defined in this

section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(5) "Site of the work," is defined as follows:

> (a) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in subparagraph (5)(b) below, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."
>
> (b) Except as provided in subparagraph (5)(c) below, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "site of the work"; provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.
>
> (c) The "site of work" does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations, and continuance in operation, are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial vendor or material handler which are established by a vendor of materials for the project before proposal are received and are not on the project site, are not included in the "site of work." Such permanent, previously-established facilities are not a part of the "site of the work," even if their operations may for a period of time, be dedicated exclusively, or nearly so, to the performance of a contract.

(6) "Wages," means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness-resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(7) "Apprentice," means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(8) "Trainee," means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

6 Procedures for Construction Contracts Revised 10/2020

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 online on the Department of Labor (DOL) website. 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. 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 and the CO documents the file with said determination. Note also that if the contract has not been awarded within 90 days after bid opening/receipt of offers, any wage determination modification published on beta.SAM.gov prior to award of the contract shall be effective with regard to that contract unless the FAA Administrator or his or her designee requests and obtains an extension of the 90-day period from the DOL Administrator. 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 races 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 Representative (COR) 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 COR, 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 COR 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, 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.

7 Walsh-Healey Public Contracts Act Revised 10/2014

a. The Walsh-Healey Public Contracts Act (41 U.S.C §§ 6501-6511) requires all contracts, that will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed $15,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

(1) Items under express statutory authority to purchase "in the open market," such as commercial items;

(2) Items under emergency, single source circumstances;

(3) Perishable or agricultural products;

(4) Public utilities;

(5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;

(6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;

(7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;

(8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)

(9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).

(10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).

(11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and

(12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

(1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.

(2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 202l0. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 202l0.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

(1) If a contract for $15,000 or less is subsequently modified to exceed $15,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.

(2) If a contract for more than $15,000 is subsequently modified by mutual agreement to $15,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh Healey provisions in contracts in excess of $15,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.

(4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA- owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed $15,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. *Eligibility as a Manufacturer or Regular Dealer.*

(1) *Manufacturer*. An offeror qualifies as a manufacturer if it shows before award that

it is:

(a) *Established*. An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.

(b) *Newly entering*. An offeror that is newly entering into a manufacturing activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:

(i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of
the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) *Regular Dealer.*

(a) *Qualifications.* An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales.* Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications.* For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. *Determination Of Eligibility*.

(1) The responsibility for applying the eligibility requirements begins with the CO.

(2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:

(a) The CO doubts the validity of the attestation;

(b) A protest has been lodged;

(c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or

(d) The procurement team is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the procurement team should, while on site, confirm the offeror’s eligibility under Walsh-Healey.

(3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:

(a) Pre-award surveys;

(b) Experience of other acquisition offices;

(c) Information available from the cognizant contract administration office;

(d) Information provided directly by the offeror; and

(e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on-site survey conducted specifically for that purpose.

(4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:

(a) The offeror will be notified in writing that:

(i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.

(ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct pre-award investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. *Pre-Award Protests Against Eligibility.*

(1) When, before award, an unsuccessful offeror challenges the eligibility of the

apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. *Award Pending Final Determination.*

(1) Award may be made immediately if the CO certifies in writing that:

(a) The products to be acquired are an emergency requirement;

or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. *Award*. The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. *Postaward.*

(1) *Protests*.

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror*. If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation*. If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division*. Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are attached.

l. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

8 Fair Labor Standards Act

No contractor or subcontractor holding a service contract for any dollar amount will pay any of its employees working on the contract less than the nationally established minimum hourly wage (as specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206))

9 Service Contracts/Service Contract Labor Standards Revised 10/2020

a. *General.* The Service Contract Labor Standards (41 U.S.C. §§ 6701-6707), selected provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201), and related Department of Labor regulations (29 CFR parts 4, 6, 8, 541, and 1925) apply to service contracts.

b. *Service Contract Labor Standards.* The Service Contract Labor Standards (SCLS) applies to contracts if the principal purpose is to furnish services in the U.S. through the use of service employees, unless exempted. Service contracts greater than $10,000 must contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowed compensation, and a statement of equivalent Federal employee classifications and wage rates. Additionally, the SCLS limits the term of service contracts to 5 years (41 U.S.C. § 6707(d)).

Consistent with Executive Order 13706 "Establishing Paid Sick Leave for Federal Contractors", contracts subject to the Service Contract Labor Standards must include AMS clause 3.6.2-46 "Paid Sick Leave".

c. *Exemptions from SCLS.* The SCLS does not apply to:

(1) Contracts performed outside of the U.S.;

(2) Contracts $10,000 or less;

(3) Construction, alteration, or repair of public buildings or public works, including painting and decorating;

(4) Dismantling, demolition or removal of improvements when part of a construction contract;

(5) Work performed by a regular dealer or manufacturer (in accordance with the Walsh-Healey Public Contracts Act). Service contracts for remanufacturing of equipment may be subject to Walsh-Healey Public Contracts Act, rather than the SCLS, if the work is so extensive as to be equivalent to manufacturing. Remanufacturing is considered to be major overhaul or modification of equipment, material, or an item which involves:

(a) complete or substantial teardown to the component level;

(b) substantially all of the parts are reworked and/or replaced, or outmoded parts are replaced;

(c) the equipment is reassembled; and

(d) the work is performed at a facility operated by the contractor. Remanufacturing does not include repair of damaged equipment or routine maintenance unless there is complete teardown, rework, and reassembly;

(6) Transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(7) Contracts for furnishing of services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(8) Public utility services;

(9) Employment contracts with an individual(s) (rather than a firm with multiple employees);

(10) Contracts with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly-scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for a substantial portion of the carrier's revenues;

(11) Carriage of freight or personnel if subject to regulated rates in section 10721 of the Interstate Commerce Act;

(12) Contracts principally for maintenance, calibration, or repair of automated data processing equipment, office information/word processing systems, scientific and medical equipment, and office/business equipment (if services are performed by the manufacturer or supplier of the equipment), subject to the following:

(a) the equipment is commercially available;

(b) the price of services is based on established catalog or market prices;

(c) employees used for Government contracts and commercial contracts are under the same overall compensation plan; and
(d) the contractor certifies in the contract to the aforementioned conditions; or

(13) *Employees* who are bona fide executive, administrative or professional employees (as defined and implemented in 29 CFR 541). Some support service contracts involve professional employees who may be exempt from SCLS requirements. Professionals are those employees having recognizable status based on acquiring professional knowledge through prolonged study, such as accountancy, actuarial computation, architecture, dentistry, engineering, law,

medicine, nursing, pharmacy, the sciences (such as biology, chemistry, physics, and teaching). To be a professional employee, a person must be involved essentially in discharging professional duties and exercising judgment.

d. *Examples of Contracts Covered by SCLS*

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the SCLS (see 29 CFR 4.130 for additional examples):

(1) Motor pool operation, parking, taxicab, and ambulance services;

(2) Packing, crating, and storage;

(3) Custodial, janitorial, housekeeping, and guard services;

(4) Food service and lodging;

(5) Snow, trash, and garbage removal;

(6) Some support services at Government installations, including grounds maintenance and landscaping;

(7) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services;

(8) Electronic equipment maintenance and operation and engineering support services;

(9) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment;

(10) Operation, maintenance, or logistics support of a Government facility;

(11) Data collection, processing and analysis services;

e. *Determining SCLS Applicability.* Prior to issuing a screening information request, the CO should determine SCLS applicability to the particular acquisition and anticipated categories of contractor employees. If the SCLS applies to any anticipated categories of employees, the CO will include the appropriate Wage Determination from the Wage Determination website (www.beta.SAM.gov) in the SIR. If there is no Wage Determination available for the location of the services to be performed, the CO will request a new Wage Determination from DOL using the e98 process.

10 Procedures for Service Contracts **Revised 10/2020**

a. DOL Wage Determinations. For contracts subject to the SCLS, DOL will determine the hourly wage and fringe benefits to be paid employees. DOL wage determinations can be based on either that which prevails for a given locality or can be based on collective bargaining agreements (CBA) between employees and contractors. In certain instances, a DOL wage determination will not apply; in those cases, employees must be paid at least the nationally established minimum wage in the Fair Labor Standards Act.

(1) *Wage Determination Based on Collective Bargaining Agreement*. Follow-on (successor) contractors performing substantially the same services in the same locality must pay wage and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide CBA entered into under the incumbent's (predecessor) contract. However, this requirement will not apply if DOL determines, as a result of a hearing, that the CBA wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality, or that they have not been reached as a result of arm's length negotiations.

b. *Requesting a Wage Determination.* When the SCLS applies to a particular acquisition, the CO will submit a request to, and obtain a response from, DOL regarding the minimum wage and fringe benefits applicable to the acquisition. The CO will obtain an applicable wage determination through DOL's wage determinations online program (www.beta.SAM.gov). If there is not an appropriate SCLS wage determination for a contract action, the CO must use DOL's e98 electronic process, also available on its website, to request a wage determination. The CO will request a wage determination for:

(1) Each new screening information request (SIR) and contract over $10,000;

(2) Each contract modification which brings the contract value above $10,000, and

(a) Extends the existing contract pursuant to an option clause or otherwise; or

(b) Changes the scope of the contract whereby labor requirements are affected significantly.

(3) Each multiple-year contract over $10,000 upon:

(a) annual anniversary date if the contract is subject to annual appropriations; or

(b) biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years (unless otherwise advised by DOL).

c. *Utilizing beta.SAM.gov and the e98 Process.* Instructions in selecting wage determinations from and using the e98 form are available in the beta.SAM.gov Learning Center provided on its website.

d. *Collective Bargaining Agreements.*

(1) Early in the acquisition cycle, the CO should determine whether an existing CBA will affect the planned acquisition. The CO should determine whether there is an existing (predecessor) contract and, if so, whether the incumbent prime contractor, or subcontractors, and any of their employees have a CBA.

(2) Section 4(c) of the SCLS provides that a follow-on (successor) contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by an incumbent contractor.

(3) Section 4(c) of the SCLS is subject to the following limitations:

(a) It will not apply if the incumbent contractor enters into a CBA for the first time and the CBA does not become effective until after the expiration of the incumbent's contract.

(b) If the incumbent contractor enters into a new or revised CBA during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement will not be effective for the purposes of section 4(c) of the SCLS if:

(i) the FAA receives notice of the terms of the CBA after follow-on contract award, provided that the start of performance is within 30 days of award; and

(ii) The CO has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates.

(4) If section 4(c) of the SCLS applies, the CO will obtain a copy of any CBA between an incumbent contractor, or subcontractor, and its employees (the clause AMS 3.6.2-28 "Service Contract Labor Standards" requires the incumbent prime contractor to furnish the CO a copy of each CBA.) The CO may:

(a) Use the beta.SAM.gov to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a copy of the collective bargaining agreement, into the successor contract action. Unless requested to do so, it is not necessary to submit a copy of the collective bargaining agreement to the Department of labor.

(b) Use the e98 process on beta.SAM.gov to request that DOL prepare the wage determination. DOL may request a copy of the collective bargaining agreement from the CO in order to prepare the wage determination.

(5) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the CO will identify the locations to which the agreements apply.

(6) If the CBA does not apply to all service employees under the contract, the CO will utilize beta.SAM.gov to obtain the prevailing wage determination for those classifications not covered by the collective bargaining agreement. The CO will also separately list in the solicitation and contract the service employee classifications: (a) subject to the CBA, and (b) not subject to any CBA.

e. *Notification to Interested Parties Under Collective Bargaining Agreements.*

(1) The CO should determine whether the incumbent prime contractor's, or its subcontractors', service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the CO will give both the incumbent contractor and its employees' collective bargaining agent written notification of:

(a) The forthcoming follow-on contract and the applicable acquisition dates (issuance of SIR, receipt of offers, commencement of communication, award of contract, or start of performance, as applicable); or

(b) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as applicable); or

(c) The forthcoming multiple-year contract anniversary date (annual anniversary date or biennial date, as applicable).

(2) The CO will give written notification at least 30 days in advance of the earliest applicable acquisition date or the applicable option exercise date in order for the time-of- receipt limitations to apply. The CO will retain a copy of the notification in the contract file.

f. *Place of Performance Unknown.* The CO should identify all possible places of performance, even though the actual place of performance will not be known until the successful offeror is chosen. The CO should obtain a wage determination for each locality where service may be performed. Should the CO subsequently learn of additional possible places of performance, the CO will obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations.

g. *Wage Determinations Involving and Not Involving a Collective Bargaining Agreement.*

(1) *Wage Determination Not Involving a CBA.*

(a) If the CO has not received a response from DOL within 10 days, the CO should contact the Wage and Hour Division to determine when the wage determination, or revision to a wage determination, can be expected.

(b) When the CO has received a wage determination and DOL subsequently issues a wage determination revision, the revision will not be effective if the CO receives it less than 10 days before receipt of offers and the CO

determines there is not reasonable time to incorporate the revision into the screening information request. If DOL issues a revision after contract award or modification award, the revision will not be effective, provided that contractor performance starts within 30 days of the contract award or modification. If the contract does not specify a start of performance date within 30 days of the award or modification, the CO will notify DOL and any revision received by the CO not less than 10 days before commencement of the work will be effective.

(2) *Wage Determination Involving a CBA.*

(a) A wage determination or revision based on a new or changed CBA will not be effective if notice of the terms of the new or changed CBA is received by the CO less than 10 days before receipt of offers and the CO determines there is not reasonable time to incorporate the new or revised CBA into the SIR. If DOL issues a wage determination revision after follow-on contract award or modification, the revision will not be effective, provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed CBA received by the CO not less than 10 days before commencement of the work will be effective for purposes of the successor contract under section 4 (c) of the SCLS.

(3) If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the SIR/contract action should proceed according to the following instructions:

(a) If a successorship/same locality/incumbent CBA situation exists, the CO will incorporate in the SIR/contract the wage and fringe benefit terms of the CBA, or the CBA itself, and include a wage determination referencing that collective bargaining agreement created by use of the beta.SAM.gov website. The CO may incorporate the wage and fringe benefit terms of the CBA in other contract actions, such as exercise of options, in order to facilitate price adjustments for options in fixed price contracts.

(b) The terms of a new or changed CBA, negotiated by the incumbent contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraph f.(2)(a) above.

h. *DOL Response to Late Requests for Wage Determination.*

If the CO has not requested a wage determination in a timely manner and the CO has not received a response from DOL, the CO should contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition

schedule, the CO should use the latest wage determination or revision, if any, incorporated in the existing contract. If a CBA exists, the CO will incorporate the wage and fringe benefit terms of the CBA, or the CBA itself. If any new or revised wage determination is received, the CO will incorporate it in the SIR or contract within 30 days of receipt. When the wage determination is received after contract award or modification:

(1) The CO will equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision when there is no CBA involved. DOL may require retroactive application of the wage determination for a contractual action involving more than five service employees; or

(2) The CO will not equitably adjust the contract price if a CBA is involved since the wage determination or revision will be based on the economic terms of the CBA.

i. *Review of Wage Determination*.

The CO should review wage determinations received to ensure the correct response has been provided. Additionally, the CO should consider the following:

(1) *Based on Incumbent CBA*. If wages, fringe benefits, or periodic increases provided for in a CBA vary substantially from those prevailing for similar services in the locality, or that the CO believes the CBA was not the result of arm's length negotiations, the CO should consider bringing the matter to DOL for a hearing.

(2) *Based on other than Incumbent CBA*. Upon receiving a wage determination not predicated upon a CBA, the CO will ascertain:

(i) Whether the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(ii) Whether the wage determination contains significant errors or omissions.

(iii) If either is (i) or (ii) is evident, the CO will contact DOL to determine appropriate action.

(3) *Request for Hearing.* The FAA or other interested parties may request a hearing on an issue involving the review of a wage determination. To obtain a hearing, the CO should submit a request to the DOL, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, 20210, with sufficient data to support that the rates at issue vary substantially from those prevailing for similar services in the same locality or that a CBA was not the result of arm’s length negotiations. The request should also include: (1) the number of the wage determinations at issue; (2) name of contracting agency; (3) status of the acquisition and any estimated acquisition dates (e.g., proposal receipt, award, and commencement of performance); (4) names and addresses, if known, of interested parties; and (5) a description of the work.

(4) Unless DOL determines that extraordinary circumstances exist, they will not consider requests for a hearing unless received before the commencement date of the contract or the follow-on option period, as the case may be.

j. *Delay of Acquisition Dates Over 60 Days.*

If any award was delayed, for whatever reason, more than 60 days from the date indicated on the submitted e98, the CO must submit a new e98. Any revision of a wage determination received by the CO as a result of that communication, or upon discovery by DOL of a delay, will supersede the earlier response.

k. *Discovery of Errors by the Department of Labor.*

If DOL determines, either before or after a contract award, that a CO made an erroneous determination that the SCLS did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the CO within 30 days of notification by DOL will include in the contract the clause "Service Contract Labor Standards", and any applicable wage determination issued by DOL. DOL may require retroactive application of that wage determination. The CO should equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

l. Statement of Equivalent Rates for Federal Hires.

The statement required under clause "Statement of Equivalent Rates for Federal Hires" will set forth those wage rates and fringe benefits that would be paid by the FAA to various classes of employees. The rates listed will be hourly wages for GS step 1 employees or WG step 2 for non- supervisory or WG step 3 for supervisory wage, as applicable. Personnel offices can provide assistance in determining the appropriate Federal job categories and hourly wages.

m. *Notification to Contractors and Employees*.

(1) As soon as possible after contract award, the CO should inform the contractor of the labor standards requirements of the contract relating to the SCLS and of the contractor's responsibilities under these requirements; unless it is clear that the contractor is fully informed.

(2) At the time of award, the CO should furnish to the contractor Department of Labor Publication WH-1313, "Notice to Employees Working on Government Contracts," for posting. The CO should also attach any applicable wage determination to Publication WH-1313.

n. *Additional Classes of Service Employees*.

(1) If the CO is aware that contract performance involves classes of service employees not listed in the wage determination, the CO should require the contractor to prepare and submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" (the form provides instructions for completing). This "conformance" procedure requires the contractor to match, as closely as possible, the unlisted job categories to those which are listed on the wage determination. The CO

should review the completed SF 1444 and supporting documentation (which should also include the agreement or disagreement of the employees' representative or the affected employees themselves), add a statement whether the CO concurs with the contractor's job classification, and forward the package to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (a) approve, modify, or disapprove the request when the parties are in agreement, or (b) render a final determination in the event of disagreement among the parties. The Wage and Hour Division will notify the CO if more than 30 days will be required to act on the SF 1444.

(2) Some wage determinations will list a series of classes within a job classification family, for example, computer operator level I, II, and III. Generally, level I is the lowest, entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) may not be conformed, but may be used if listed on a wage determination. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

o. *Seniority Lists.*

If a contract is performed at a Federal facility where incumbent contractor employees may be hired/retained by a follow-on contractor, the incumbent prime contractor is required to furnish to the CO, no later than 10 days before contract completion, a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment for each person. At the commencement of the follow-on contract, the CO should provide a copy of the list to the follow-on contractor for determining employee eligibility for vacation or other fringe benefits (which are based upon length of service, including service with predecessor contractors) if such benefit is required by an applicable wage determination.

p. Withholding of Contract Payments.

Any violations of SCLS renders contractors liable for the amount of any deductions, rebates, refunds, or underpayments, or nonpayment due employees. The CO may withhold, or will withhold or upon written request by DOL at a level no lower than Assistant Regional Administrator, the amount needed to pay underpaid employees. The withheld funds should be placed in a deposit account for later transfer to DOL for disbursement (the CO should consult with the cognizant accounting office).

11 Professional Employee Compensation **Revised 10/2020**

The Service Contract Labor Standards (SCLS) was enacted to ensure contractors fairly compensate their blue collar and some white collar workers, but the SCLS does not provide coverage for bona fide executive, administrative, or professional employees. Professional employees should be compensated fairly and properly. When meaningful numbers of professional employees will be provided under a planned service contract, the CO may

require offerors to submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits. Unrealistically low professional employee compensation should be evaluated for the potential risk to contract performance.

12 Dismantling, Demolition, or Removal of Improvements Revised 10/2020

If a contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Labor Standards applies unless further work which will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

13 Convict Labor

a. The policies and procedures controlling the employment of prison inmates working on Government contracts are based 18 U.S.C. 4082(c)(2), Executive Order 11755, dated December 29, 1973, and Executive Order 12943, dated December 13,

1994. b. In performing a contract, contractors may employ:

(1) persons on parole or probation;

(2) persons who have been pardoned or who have served their terms;

(3) Federal prisoners; or

(4) Nonfederal prisoners authorized by the Attorney General to work at paid employment in the community if:

(a) The worker is paid or is in an approved work training program on a voluntary basis;

(b) Representatives of labor union organizations have been consulted;

(c) Paid employment will not (i) displace employed workers; (ii) be applied to skills in which there is a surplus of labor in the locality; (iii) impair existing contracts for services; and

(d) Pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed.

14 Equal Employment Opportunity Revised 7/2007

a. *General*

(1) Executive Order 11246, as amended, prohibits contractors and subcontractors from discriminating against any employee or applicant because of race, color, religion, sex, or national origin, and to take affirmative action to ensure these requirements are met regarding any existing employee.

(2) The FAA may not award a contract or modification, or approve a subcontract, with a contractor found ineligible by DOL's Office of Federal Contract Compliance Programs (OFCCP) because of noncompliance with EO 11246.

(3) Neither the FAA, nor its contractors, will solicit or contract in a manner to avoid applicability of the nondiscrimination and affirmative action or equal opportunity requirements.

(4) OFCCP has primary responsibility for administration and enforcement of affirmative action and equal opportunity requirements. Contractor disputes related to EO 11246 compliance are to be handled according to DOL regulations (41 CFR 60-1.1).

b. *Procedures*.

(1) *Other Than Construction*. Revised 07/2007

(a) The CO will obtain a pre-award clearance from the OFCCP area office for contracts, and subcontracts, totaling $10,000,000 or more, including options, and for modifications increasing the total contract value to $10,000,000 or more. Pre- award clearances remain valid for a 24-month period from the date of issuance. The CO may make verbal requests if confirmed in writing.

(b) The CO does not need to request a pre-award clearance if

(i) The specific proposed contractor is listed on OFCCP's National Pre- award Registry website

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The CO documents the Registry review in the contract file.

(c) The following information should be included in pre-award clearance request:

(i) Name, address, telephone number and any known corporate affiliation of the apparent prime contractor and any known subcontractors where their subcontract is expected to exceed $10,000,000;

(ii) Anticipated date of award;

(iii) Whether the prime or first tier subcontractor have held previous federal contracts or applicable subcontracts;

(iv) The places of contemplated performance;

(v) The period of performance; and

(vi) Estimated dollar amount of the contract and each first-tier subcontract.

(d) The CO should allow 30 days for obtaining the pre-award clearance. If waiting for the pre-award clearance would delay award of an urgent and critical contract, the CO may proceed with award, subject to concurrence by the Chief of the Contracting Office (COCO). The CO must also immediately notify the OFCCP area office of the award. If OFCCP subsequently finds the contractor or subcontract is ineligible for the award, OFCCP will provide notice of the applicable course of action. (Revised 10/2002)

(2) *Construction.*

(a) Construction contractors are required to meet (i) the contract terms and conditions which cite affirmative action requirements in specified geographical areas or projects, and (ii) applicable requirements of DOL regulations (42 CFR 60-1 and 604).

(b) Periodically, OFCCP publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry for certain geographic areas. The CO may contact the OFCCP regional office to request current information on affirmative action goals to be included in the clause "Affirmative Action for Construction Contracts."

(c) COs will give written notice to the appropriate OFCCP area office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification is to include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by OFCCP, the CO is to arrange a conference among contractor, the FAA's contracting personnel and EEO contract compliance personnel to discuss the contractor's compliance responsibilities.

c. *Inquiries and Complaints*. The CO should refer the following to the applicable OFCCP area office:

(1) An inquiry from a contractor regarding status of its compliance with Executive Order 11246, or rights of appeal;

(2) Labor union inquiries regarding the revision of a collective bargaining agreement

in order to comply with Executive Order 11246;

(3) Complaints alleging violation of the "Equal Opportunity" clause. The CO will advise the complainant in writing of the referral. The prime contractor or subcontractor that is the subject of a complaint will not be advised in any manner, or for any reason, of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

d. *Enforcement*. OFCCP will provide written direction to the CO regarding any enforcement actions for contractor violations of EO 11246, DOL regulations, or the "Equal Opportunity" and related clauses. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed by OFCCP for violations.

e. *Poster*. The CO will furnish to the prime contractor appropriate quantities of OFCCP's Equal Employment Opportunity posters prior to contract performance.

f. *Exemptions*. The following are totally or partially exempt from EO 11246:

(1) Contracts which agency head determines are necessary for national security;

(2) Contracts specifically exempted by OFCCP;

(3) Individual contracts and subcontracts less than $10,000 (unless the value of all contracts or subcontracts awarded to that contractor or subcontractor during any 12 month period will exceed $10,000);

(4) Contracts performed outside of the U.S.;

(5) Contracts with state or local governments;

(6) Work on or near Indian Reservations;

(7) Facilities not connected with contracts;

(8) Indefinite quantity contracts if the amount ordered during any year will, or does, not exceed $10,000.

g. *OFCCP Concurrence for Certain Exemptions.* The CO must request and obtain concurrence by the Director of OFCCP for the exemptions under subparagraphs f.(1), f.(2), and f.(5) above. The CO will prepare a written request delineating the reasons and authority for the exemption.

15 Equal Opportunity for Veterans Revised 1/2011

a. The Vietnam Era Veterans Readjustment Act of 1972 (38 U.S.C. 4211 and 4212), Executive Order 11701, 41 CFR Part 60-250 and Part 61-250, and the Veterans Employment Act of 1998 (Public Law 105-339) require contractors and subcontractors, when entering into contracts

subject to the Act, to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veteran's status.

b. *Definitions.*

(1) "Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United State military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(2) "Disabled Veteran" means:

(a) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(b) A person who was discharged or released from active duty because of a service-connected disability.

(3) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under laws administered by the Department of Defense.

(4) "Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

(5) "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

(6) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S.Virgin islands, and Wake Island.

c. Applicability. The Act applies to all contracts for supplies, services, and construction of $100,000 or more (including contracts with a State or local government, or any agency, instrumentality, or subdivision of that government, that does not work on or under the contract), unless waived by OFCCP.

d. *Waivers.*

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Equal Opportunity for Veterans (AMS 3.6.2-12)," as follows:

(a) The CO may waive any individual contract if in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest.

(2) The COCO, with the concurrence of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

e. *Department of Labor Notices and Reports.*

(1) The CO will furnish notices for posting to the contractor when they are prescribed by OFCCP. See the DOL website.

(2) Contractors will submit a report (Standard Form VETS-100, "Federal Contractor Veterans' Employment Report") at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clauses "Equal Opportunity for Veterans," have been waived.

f. *Collective Bargaining Agreements*. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

g. *Complaint Procedures*. The CO must forward any complaints about administration of the Act to the Veteran's Employment and Training Service of DOL, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

h. *Actions Because of Noncompliance*. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause.

16 Employment of the Disabled Revised 7/2007

a. Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), P.L. 93-112, section 503, and 41 CFR Parts 60-741 to 60-642 require Government contractors and subcontractors, when entering into contracts subject to the Act, to take affirmative action to

employ, and advance in employment, qualified disabled individuals without discrimination based on their physical or mental disabled.

b. *Applicability*. The Rehabilitation Act applies to all contracts for supplies, services, and construction of $10,000 or more unless waived by the Secretary of Labor. The Act does not apply to contracts with a State or local government (or any agency, instrumentality, or subdivision of that government) that does not work on or under the contract.

c. *Waivers*

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Affirmative Action for Disabled Workers," as follows:

(a) The CO may waive any individual contract if deemed to be in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest and:

(i) It is impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(2) The COCO, with the concurrence of the Director of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify the Director of OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

(4) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal will not apply to contracts awarded before the withdrawal.

d. *Department of Labor Notices.* The CO will furnish to the contractor appropriate notices that state the contractor's obligations and the disabled individual's rights under the Employment of the Disabled program. The CO may obtain these notices from the applicable Department of Labor Regional Office, Office of Federal Contract Compliance Programs, shown in the attached list by geographic jurisdictions.

e. *Collective Bargaining Agreements*. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

f. *Complaint Procedures*. The CO should forward any complaints about administration of the Act to the Veteran's Employment Service of DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

g. *Actions Because of Noncompliance*. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause. These sanctions may include:

(1) Withholding from payments otherwise due;

(2) Termination or suspension of the contract; or

(3) Debarment.

17 Forced or Indentured Child Labor Added 7/2007

a. *General.*

(1) The FAA must take action to enforce laws prohibiting the manufacture or importation of products mined, produced, or manufactured wholly or in part by forced or indentured child labor (E.O. 13126). The Department of Labor maintains the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) that identifies products, by country of origin, that might have been mined, produced, or manufactured by forced or indentured child labor. The List is located at www.dol.gov/ilab.

(2) When issuing a solicitation for supplies expected to exceed $10,000, the CO must check the List for the required product(s). The appearance of a product on the List does not bar the purchase of the item in the identified country, but rather alerts the CO that such a product may have been mined, produced, or manufactured by forced or indentured child labor.

(3) Due to current trade agreements, the appearance of any end product on the list does not apply to a solicitation or contract if the identified country of origin is:

(a) Canada, and the anticipated value is $25,000 or more; or

(b) Mexico, and the anticipated value is $64,786 or more.

(4) Except as provided in subparagraph (3) of this section, before the CO may make award for an end product of a type identified by country of origin on the List, the offeror must certify that it will not supply an end product on the List that was mined in a country identified on the List, or that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product.

(5) If a CO has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract, the CO must refer the matter for investigation to the Inspector General.

b. *Violations and Remedies.*

(1) Violations of this section include:

(a) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor;

(b) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes; or

(c) The contractor furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor.

(2) Remedies include:

(a) Termination of the contract.

(b) Suspension of the contractor.

(c) Debarring the contractor for a period not to exceed 3 years.

18 Trafficking in Persons Revised 7/2018

a. *Definitions.*

(1) Commercial Sex Act: Any sex act on account of which anything of value is given to or received by any person.

(2) Debt Bondage: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(3) Severe Trafficking of Persons:

(a) Sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced has not attained 18 years of age; or

(b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

b. *General.*

(1) The Trafficking Victims Reauthorization Act of 2005 (Pub. Law No. 109-164), 22 USC 7104 (g) and National Security Directive NSPD-22 require FAA to take affirmative steps for its contracts to combat all forms of trafficking in persons. Contracts must prohibit any activities on the part of the contractor, subcontractor, or employee of the contractor or subcontractor that support or promote:

(a) Severe forms of trafficking of persons;

(b) Commercial sex acts;

(c) The use of forced labor in the performance of the contract; and

(d) All other activities associated with (a) through (c) above.

(2) Contractors must take action to ensure policies are in place to combat severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(3) The FAA must take appropriate action, including termination, on contractors that support, promote, or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(4) AMS clause 3.6.2-39 “Trafficking in Persons” is required in all SIRs and contracts.

c. *Violations and remedies.*

(1) Violations of this section include:

(a) The contractor, subcontractor, or employee of the contractor or subcontractor engages in severe forms of trafficking in persons;

(b) Any contractor or subcontractor employee procures a commercial sex act during the performance time of the contract; or

(c) The contractor, subcontractor, or employee of the contractor or subcontractor uses forced labor in the performance of the contract.

(2) Remedies include:

(a) Required removal of a contractor or subcontractor employee from the performance of the contract;

(b) Suspension of contract payments until the contractor has taken the appropriate remedial action;

(c) Loss of award fee for the period of noncompliance

consistent with the Performance Evaluation Plan (PEP);

(d) Declining to exercise available options under the

contract;

(e) Termination for default; or

(f) Suspension or debarment.

(3) Credible Information. Upon receipt of information regarding a violation listed in this section, the contracting officer will promptly notify, in accordance with Agency procedures, the FAA Office of Security and Hazardous Material Safety (ASH) and the FAA Debarring/Suspending Official. If information regarding the violation is found to be credible, ASH must then promptly notify the DOT-IG and if appropriate, law enforcement officials with jurisdiction over the alleged offense.

The Contracting Officer may also direct the contractor to take specific steps to abate the alleged violation or to enforce the requirements of its compliance plan.

(4) Review of DOT-IG report.

(a) The FAA Administrator will ensure that the DOT-IG provides the Contracting Officer a copy of the DOT-IG report of an investigation of a violation of trafficking in persons prohibitions specified in clause 3.6.2-39.

(b) Upon receipt of a report from the DOT-IG that provides support for the allegations, the FAA Administrator, in accordance with FAA procedures will delegate to an authorized agency official, such as the FAA debarring/ suspending official, the responsibility to-

(i) Expeditiously conduct an administrative proceeding, allowing the contractor an opportunity to respond to the report;

(ii) Make a final determination as to whether the allegations are substantiated; and

(iii) Notify the Contracting Officer of the determination.

(c) The debarring/suspending official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in AMS Debarment and Suspension Guidance to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the appropriate mitigating and /or aggravating factors specified in clause 3.6.2-39.

(d) After a final determination that the allegations of a trafficking in persons violation are substantiated, the Contracting Officer must consider taking any

of the possible remedies cited above. When determining the appropriate remedies, the Contracting Officer must consider the appropriate mitigating and/or aggravating factors specified in clause 3.6.2-39.

d. *Compliance Plan*

(1) Contracts having at least $500,000 for either supplies (other than commercially available off-the-shelf items) acquired overseas, or services performed outside of the United States require a compliance plan that the contractor must maintain during the performance of the contract.
(2) This compliance plan must be appropriate to the size and complexity of the contract as well as the nature and scope of the activities to be performed for the FAA.
(3) Specific requirements for the compliance plan are in clause 3.6.2-39. –Successful offerors on applicable acquisitions will also need to submit a certification in accordance with provision 3.6.2-45 "Certification Regarding Trafficking in Persons Compliance Plan".

19 Reserved Revised 1/2020

20 Project Labor Agreements Revised 7/2012

a. *Definitions.*

(1) Labor organization: a labor organization as defined in 29 U.S.C. 152(5);

(2) Large-scale construction project: a construction project where the cost to FAA of all contracts associated with the project is $25M or more; and

(3) Project Labor Agreement: a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project, and is an agreement as described in 29 U.S.C 158 (f).

b. *Determination*. Consistent with Executive Order 13502, dated February 6, 2009, for all large-scale construction projects, the CO in consultation with the program office and/or COR may require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate a project labor agreement with one or more labor organizations if they determine that a project labor agreement will:

(1) Advance FAA's interest in achieving economy and efficiency in procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with the law.

The determination whether to enter into a project labor agreement must be documented in the contract file.

c. *Requirements*. All project labor agreements must:

(1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and other job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;

(6) Fully confirm to all statutes, regulations, and Executive Orders; and

(7) Include any additional requirements deemed necessary to meet the needs of FAA.

d. *Additional Criteria*. Additional factors that may be considered in this determination whether to use a project labor agreement include but are not limited to the following:

(1) The size and complexity of the project;

(2) The importance of the project and the need to adhere to a particular timeline;

(3) The risk of labor unrest on the project and the circumstances that may lead to a heightened risk of labor disruption. Examples of such circumstances are the history of labor unrest in the area, the anticipated working conditions on the project related to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;

(4) The impacts of a labor disruption to the users, the operation of the facility, and the region;

(5) The costs of a delay should a labor disruption occur; and

(6) The available labor pool relative to the particular skills required to complete the project.

e. *Implementation.* When a project labor agreement is required, FAA has the following submittal options:

(1) When offers are due. The screening information request (SIR) must fully specify all requirements for the project labor agreement;

(2) From the apparent successful offeror prior to award. The SIR must require that once the apparent successful offeror has been determined, the apparent successful offeror must submit a proposed project labor agreement to the CO; and

(3) After award. The SIR must require that the project labor agreement be negotiated within a certain number of days after contract award, and that a copy of the negotiated agreement must be submitted to the CO.

f. Possible submittal requirement considerations include but are not limited to the following:

(1) A large number of anticipated offerors could render each offeror having to negotiate a project labor agreement in advance a burden that could delay the submittal of offers;

(2) Requiring submittal of a project labor agreement from all offerors in advance might reduce cost risk in that the costs of such an agreement may be more accurately factored into an offeror's proposal; and

(4) Post-award execution of a project labor agreement could undercut the benefits of such an agreement as the work on the overall project will have already started.

B Clauses

view contract clauses

C Forms

view procurement forms

D Attachment

Address list of DOL Regional Offices of Federal Contract Compliance Programs (OFCCP) by geographic jurisdictions.

Office of Federal Contract Compliance Programs Regional Offices

1. New York

(New Jersey, New York, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New

Hampshire, Rhode Island, Vermont)

201 Varick Street Room 750
New York, NY 10014

(212) 337-2007, (212)620-7705 (Fax)

2. Philadelphia
(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Curtis Center, Suite 750 West
170 S. Independence Mall West
Philadelphia, PA 19106

(215) 861-5763 (215)861-5769 (Fax)

3. Atlanta

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Atlanta Federal Center
61 Forsyth Street,
S.W. Room 7B75
Atlanta, GA 30303

(404) 562-2424 (404) 562-2429 (Fax)

4. Chicago Region

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska)

Kluczynski Federal Building
230 South Dearborn Street

Room 570

Chicago, IL 60604

(312) 353-0335 (312) 353-2813 (Fax)

5. Dallas

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Federal Building, Room 840
525 South Griffin
St. Dallas, TX
75202

(214) 767-2804 (214) 767-2149 (Fax)

6. San Francisco

(Arizona, California, Guam, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington)

71 Stevenson Street
Suite 1700
San Francisco, CA 94105

(415) 975-4720 (415) 975-4723 (Fax)