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As used in this part-

Administrator or Administrator, Wage and Hour Division, as used in this part, means the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 or an authorized representative.

Agency labor advisor means an individual responsible for advising contracting agency officials on Federal contract labor matters.

e98 means the Department of Labor's approved electronic application (https://www.sam.gov), whereby a contracting officer submits pertinent information to the Department of Labor and requests a Service Contract Labor Standards statute wage determination directly from the Wage and Hour Division.

Normal workweek, as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

(1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

(2) The hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

Secretary means the Secretary of Labor, U.S. Department of Labor, unless specified otherwise.

Service contract means any Government contract, or subcontract thereunder, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted by 41 U.S.C. chapter 67, Service Contract Labor Standards; see 22.1002-1(c) through (f). See 29 CFR 4.130 for an illustrative list of services covered by the Service Contract Labor Standards statute.

Service employee means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

Wage Determinations at SAM.gov means the Government internet website for both Construction Wage Rate Requirements statute and Service Contract Labor Standards statute wage determinations available at https://www.sam.gov.

Subpart 22.1 – Basic Labor Policies

22.101-1 Labor relations.

Agencies must maintain sound relations with industry and labor to ensure—

(a) Prompt receipt of information involving labor relations that may adversely affect the Government acquisition process; and

(b) That the Government obtains needed supplies and services without delay. All matters regarding labor relations must be handled in accordance with agency procedures.

22.101-2 Overtime.

Contractors must perform all contracts, so far as practicable, without using overtime, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved overtime, extra-pay shifts, and multishifts should be scheduled to achieve these objectives.

22.102 Presolicitation.

22.102-1 Overtime.

Solicitations normally must not specify delivery or performance schedules that may require overtime at Government expense.

22.102-2 Contract clause.

(a) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance. Insert the clause 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been so designated.

(b) The contracting officer must include the clause at 52.222-2, Payment for Overtime Premiums, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold; unless (a) a cost-reimbursement contract for operation of vessels is contemplated, or (b) a cost-plus-incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

22.103 Evaluation and award.

(a) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to--

(1) ascertain the extent that offers are based on the payment of overtime and shift premiums and

(2) negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(b) When it becomes apparent during negotiations of applicable contracts (see 22.102-2(b)) that overtime will be required in contract performance, the contracting officer must secure from the contractor a request for all overtime to be used during the life of the contract, to the extent that the overtime can be estimated with reasonable certainty. The contractor's request must contain the information required by paragraph (b) of the clause at 52.222-2, Payment for Overtime Premiums.

22.104 Postaward.

22.104-1 General.

(a) Agencies must remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(b) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance.

(c) The office administering the contract must report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the clause at 52.222-1, Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

22.104-2 Overtime approvals.

(a) The contracting officer must review the contractor's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—

(1) Meet essential delivery or performance schedules;

(2) Make up for delays beyond the control and without the fault or negligence of the contractor; or

(3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums.

(c) Contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(8) of the clause at 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying overtime premiums under other types of contracts.

(e) Approvals by the agency approving official (see paragraph (a) of this section) may be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, contractor requests for overtime exceeding the amount authorized by paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums, must be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review the request and if it approves, send the request to the contracting officer. If the contracting officer determines that the requested overtime should be approved in whole or in part, the contracting officer must request the approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in part 31. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant that have been individually evaluated and the necessity for overtime confirmed shall be considered for approval.

(i) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

Subpart 22.2 - Convict Labor.

22.201 Presolicitation.

22.201-1 General.

Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987, and Executive Order 12943, December 13, 1994, does not prohibit the contractor, in performing the contract, from employing certain persons as stated in paragraph (b) of the clause at 52.222-3, Convict Labor.

22.201-2 Contract clause.

Insert the clause at 52.222-3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

(a) The contract will be subject to 41 U.S.C. chapter 65 (see subpart 22.6 and 22.602), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

Subpart 22.3 - Contract Work Hours and Safety Standards Act

22.301 Presolicitation.

22.301-1 General.

(a) The statute at 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards, requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all such overtime hours at not less than 1 1⁄2 times the basic rate of pay.

(b) The Secretary under 40 U.S.C. 3706, upon the Secretary's initiative or at the request of any Federal agency, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the statute (see 29 CFR 5.15).

(c) The Secretary may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR 5.14).

(d) In this subpart, 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 any employee employed as a seaman.

22.301-2 Contract clause.

Insert the clause at 52.222-4, Contract Work Hours and Safety Standards—Overtime Compensation, in solicitations and contracts when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below $200,000;

(b) For commercial products and commercial services;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR 5.15);

(e) For work to be done solely in accordance with 41 U.S.C. chapter 65 (see subpart 22.6 and 22.602);

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

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

22.302 Postaward.

(a) When an overtime computation discloses underpayments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government.

(b) The contracting officer must assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the statute. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(c) If the contractor or subcontractor fails or refuses to comply with overtime pay requirements of the statute and the funds withheld by Federal agencies for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(d) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the statute despite the exercise of due care, the agency head may—

(1) Reduce the amount of liquidated damages assessed for liquidated damages of $500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of $500 or less; or

(3) Recommend that the Secretary reduce or waive liquidated damages over $500.

(e) The procedures required for construction contracts in 22.404-2 also apply to investigations of alleged violations of the Contract Work Hours and Safety Standards on other than construction contracts.

Subpart 22.4 - Labor Standards for Contracts Involving Construction.

22.401 Definitions.

As used in this subpart -

Apprentice means a person—

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

Construction, alteration, or repair means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the “site of the work” definition, and a facility which

is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (1)(ii), and the physical place or places where the building or work will remain (paragraph (1)(i) in the "site of the work" definition).

Laborers or mechanics —

(1) Means—

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards statute, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors (but does not include any employee employed as a seaman);

(iii) 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

(iv) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals; and

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), 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.

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.

Site of the work —

(1) Means—

(i) *The primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraphs (1)(i) of "the secondary site of the work" as defined in paragraph (1)(ii) of this definition;

(3) 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 or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

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, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

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 Construction Wage Rate Requirements statute 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.

22.402 Presolicitation.

22.402-1 Applicability.

(a) *Contracts in excess of $2,000 for construction work*.

(1) The requirements of this subpart apply—

(i) Only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality, and only to construction work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the construction contract, or if construction at that site is anticipated by another contract as provided in subpart 37.3;

(iii) To the manufacture or fabrication of construction materials and components conducted in connection with the construction and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iii) To painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.

(2) The requirements of this subpart do not apply to—

(i) The manufacturing of components or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) 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 (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving construction, alteration, or repair of a public building or public work);

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

(iv) Employees who work at contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to or from the site of the work.

(b) *Nonconstruction contracts in excess of $2,000 involving some construction work*.

(1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if—

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

(ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Construction Wage Rate Requirements statute (the word *substantial* relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(iii) 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 requirements of this subpart do not apply if—

(i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The construction work is so merged with nonconstruction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

22.402-2 Copeland Act.

(a) The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

(b) The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

22.402-3 Construction Wage Rate Requirements statute.

(a) 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act, provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, must contain a clause (see 52.222-6) that no laborer or mechanic employed

directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

(b) The contracting officer must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies.

(1) If a general wage determination is not available on Wage Determinations at *SAM.gov*, a contracting agency must submit requests for project wage determinations on SF 308 to the Department of Labor (See 29 CFR 1.5 for additional information).

(i) A project wage determination will expire in 180 calendar days from the date of the determination.

(ii) If the award is not made by then, the contracting officer must ask for an extension of the determination.

(2) The contracting officer must not include project wage determinations in contracts or options other than those for which they are issued.

(c) If a solicitation is issued before the wage determination for the primary site of the work is obtained, a notice must be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the solicitation.

(d) If there is any doubt as to the proper application of wage rate schedules to the types or types of construction involved, the contracting officer must seek help from the Administrator, Wage and Hour Division.

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

22.402-4 Solicitation provision and contract clauses implementing labor standards for contracts involving construction.

(a) Insert the following clauses in solicitations and contracts in excess of $2,000 for construction within the United States:

(1) 52.222-6, Construction Wage Rate Requirements.

(2) 52.222-7, Withholding of Funds.

(3) 52.222-8, Payrolls and Basic Records.

(4) 52.222-9, Apprentices and Trainees.

(5) 52.222-10, Compliance with Copeland Act Requirements.

(6) 52.222-11, Subcontracts (Labor Standards).

(7) 52.222-12, Contract Termination—Debarment.

(8) 52.222-13, Compliance with Construction Wage Rate Requirements and Related Regulations.

(9) 52.222-14, Disputes Concerning Labor Standards.

(10) 52.222-15, Certification of Eligibility.

(b) Insert the clause 52.222-16, Approval of Wage Rates, in solicitations and contracts in excess of $2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.

(c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under 22.402-1(b) the requirements of this subpart apply to the construction work, insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.

(d) Insert the clause at 52.222-30, Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Pricing Method), in solicitations and contracts if the contract is expected to be—

(1) A fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-1(h)(6)(i) or (ii); or

(2) A cost-reimbursable type contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract.

(e) Insert the clause at 52.222-31, Construction Wage Rate Requirements—Price Adjustment (Percentage Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-1(h)(6)(iii).

(f) Insert the clause at 52.222-32, Construction Wage Rate Requirements—Price Adjustment (Actual Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate method to establish contract price is the method at 22.404-1(h)(6)(iv).

(g) Insert the provision at 52.222-5, Construction Wage Rate Requirements—Secondary Site of the Work, in solicitations in excess of $2,000 for construction within the United States.

22.402-5 Executive Orders 13658 and 14026.

Executive Order (E.O.) 13658 established minimum wages for certain workers at $10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to $11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to $15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.4 statutory wage determination amount.

22.403 Evaluation and award.

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

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

(3) The need for inclusion of the modification of a general wage determination for the primary site of the work in a solicitation is determined by the date the modified wage determination is published on the Wage Determinations at *SAM.gov*, or by the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.) During the course of the solicitation, the contracting officer must monitor the Wage Determinations at *SAM.gov* website to determine whether the applicable wage determination has been revised. Revisions published on the Wage Determinations at *SAM.gov* website or otherwise communicated to the contracting officer within the timeframes prescribed at 22.403(b) and (c) are applicable and must be included in the resulting contract. Monitoring can be accomplished by use of the Wage Determinations at *SAM.gov* website's "Alert Service".

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

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

(i) It is received by the contracting agency, or is published on the Wage Determinations at *SAM.gov*, 10 or more calendar days before the date of bid opening; or

(ii) It is received by the contracting agency, or is published on the Wage Determinations at *SAM.gov*, less than 10 calendar days before the date of bid opening, unless the contracting officer finds that there is not reasonable time available before bid opening to notify the prospective bidders. (If the contracting officer finds that there is not reasonable time to

notify bidders, a written report of the finding must be placed in the contract file and must be made available to the Department of Labor upon request.)

(2) All written actions modifying wage determinations received by the contracting agency after bid opening, or modifications to general wage determinations published on the Wage Determinations at *SAM.gov* after bid opening, shall not be effective and shall not be included in the solicitation (but see paragraph (b)(6) of this section).

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

(4) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer after bid opening, but before award, the contracting officer must—

(i) award the contract, incorporate the new determination to be effective on the date of contract award, and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates;

(ii) award the contract and modify it to include the number and date of the new determination, if the new determination for the primary site of the work does not change any wage rates; or

(iii) cancel the solicitation, but only in accordance with 14.404-1.

(5) If an effective modification is received by the contracting officer after award, the contracting officer must modify the contract to incorporate the wage modification retroactive to the date of award and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates. If the modification does not change any wage rates and would not warrant contract price adjustment, the contracting officer must modify the contract to include the number and date of the modification.

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination which is published on the Wage Determinations at *SAM.gov* before award, shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An agency head may request such an extension from the Administrator. The request must be supported by a written finding, which must include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The contracting officer must follow the procedures in paragraph (b)(4) of this section.

(c) The following applies when contracting by negotiation:

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations published on the Wage Determinations at *SAM.gov* before award, shall be effective.

(2) If an effective wage modification is received by the contracting officer before award, the contracting officer must—

(i) If the new determination for the primary site of the work changes any wage rates, amend the solicitation to incorporate the new determination and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that have not been eliminated from the competition if the closing date has passed. All offerors to whom wage rate information has been furnished must be given reasonable opportunity to amend their proposals; or

(ii) If the new determination for the primary site of the work does not change any wage rates, amend the solicitation to include the number and date of the new determination and award the contract.

(3) If an effective wage modification is received by the contracting officer after award, the contracting officer must follow the procedures in paragraph (b)(5) of this section.

(d) If a solicitation is amended after issuance to add the wage determination for the primary site of the work (see 22.402-3(c))—

(1) In sealed bidding, bids may not be opened until a reasonable time after the wage determination for the primary site of the work has been furnished to all bidders.

(2) In negotiated acquisitions, the contracting officer may open proposals and conduct negotiations before obtaining the wage determination for the primary site of the work. However, the contracting officer must incorporate the wage determination for the primary site of the work into the solicitation before submission of best and final offers.

(e) The following written notifications by the Department of Labor must be effective immediately if received by the contracting officer prior to award:

(1) A wage determination found to contain clerical errors;

(2) A solicitation includes the wrong wage determination or the wrong rate schedule; or

(3) A wage determination is withdrawn by the Administrative Review Board.

(f) For appealing a denial of reconsideration of a wage determination see 22.402-3(e).

22.404 Postaward.

22.404-1 Administration.

(a) (1) The contracting officer must furnish to the contractor, Department of Labor Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects, for posting with the wage rates. The name, address, and telephone number of the Government officer responsible for the administration of the contract must be indicated in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

(2) In accordance with the requirements of the clause at 52.222-11, 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.

(b) Before construction begins, the contracting officer must inform the contractor of the labor standards clauses and wage determination requirements of the contract and of

the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer must issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

(c) (1) If contract award is made without the required wage determination (i.e., incorporating no determination, containing a clearly inapplicable general wage determination, or containing a project determination which is inapplicable because of an inaccurate description of the project or its location), the contracting officer must—

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

(ii) Terminate the contract.

(2) If a required wage determination (valid determination in effect on the date of award) is not available, the contracting officer must expeditiously request a wage determination from the Department of Labor, including a statement explaining the circumstances and giving the date of the contract award.

(d) 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 contracting officer, pursuant to the clause at 52.222-6, Construction Wage Rate Requirements, must require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(1) Upon receipt of SF 1444 from the contractor, the contracting officer must review the request to determine whether it meets the following criteria:

(i) 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.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(2) If the criteria in paragraph (d)(1) of this section 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 contracting officer approves, the contracting officer must submit a report (including a copy of SF 1444) of that action to the Administrator, 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 contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer must submit a report (including a copy of SF 1444) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(4) (i) Within 30 days of receipt of the information, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(ii) Upon receipt of the Department of Labor's action, the contracting officer must 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 at 52.222-6 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.

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraph (d) of this section.

(f) (1) The contracting officer must examine the payrolls and payroll statements submitted in accordance with the clause at 52.222-8, to ensure compliance with

the contract requirements. The contracting agency must retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls must not be returned to a contractor or subcontractor for any reasons, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor. Particular attention should be given to-

(i) The correctness of classifications and rates;

(ii) Fringe benefits payments;

(iii) Hours worked;

(iv) Deductions; and

(v) Disproportionate employment ratios of laborers, apprentices, or trainees, to journeyman.

(2) Contractor payroll records in the Government'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 Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

(3) (i) The contracting officer must review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at 52.222-8, Payrolls and Basic Records, to ensure that the contractor has complied with the clause at 52.222-9, Apprentices and Trainees.

(ii) If a contractor has classified employees as apprentices or trainees without complying with the requirements of the clause at 52.222-9, the contracting officer must reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

(g) For purposes of the clause at 52.222-6, if the interested parties (i.e. contractor, contracting officer, and employees or their representative) cannot agree on the “cash

equivalent," the contracting officer must submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted must include—

(1) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(2) The comments and recommendations of the contracting officer

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

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

(2) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of Labor prior to exercise of the option, or within 45 days after submission of a wage determination request whichever is later; or

(ii) The Department of Labor publishes the modification to a general wage determination on the Wage Determinations at *SAM.gov* before exercise of the option.

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

(4) The contracting officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(5) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the contracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The

wage determination will be effective for the complete period of performance of those task orders without further revision.

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

(i) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(ii) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (*e.g.*, the U.S. Army Computer-Aided Cost Estimating System or similar commercial product), which is multiplied in the contract by a factor proposed by the contractor (*e.g.*, .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(iii) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend

the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Construction Wage Rate Requirements statute. The contracting officer must insert 50 percent as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(iv) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Labor Standards statute and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

(i) For appealing a denial of reconsideration of a wage determination see 22.402-3(e).

22.404-2 Enforcement.

(a) *Policy.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies must maintain an effective program that must include—

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by the regulations on labor standards for contracts involving construction in this part.

(b) *Compliance checking*. The contracting officer must make checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirement of the contract.

(1) *Regular compliance checks*. Regular compliance checking includes the following activities:

(i) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See Standard Form 1445.)

(ii) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(iii) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(iv) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(2) *Special compliance checks*. Situations that may require special compliance checks include—

(i) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(ii) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant must be so advised and invited to submit additional information.

(c) *Investigations*.

(1) *Contracting agency investigations*. Contracting agencies must conduct an investigation when a compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(i) The investigation must—

(A) Include all aspects of the contractor's compliance with contract labor standards requirements;

(B) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(C) Use personnel familiar with labor laws and their application to contracts.

(ii) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(iii) Send a written request to the Administrator, Wage and Hour Division, to obtain—

(A) Investigation and enforcement instructions; or

(B) Available pertinent Department of Labor files.

(iv) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of back wages due, to anyone other than Government contract administrators.

(v) The contracting officer must review the investigation report on receipt and make preliminary findings. The contracting officer normally must not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of noncompliance.

(vi) After completing the review, the contracting officer must—

(A) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(B) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(C) (*1*) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(*2*) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(D) If appropriate, request the contractor to make restitution for underpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(vii) After taking the actions prescribed in paragraphs (c)(1)(v) and (c)(1)(vi) of this subsection—

(A) The contracting officer must prepare and forward a report of any violations, including findings and supporting evidence, to the agency head. Standard Form 1446, Labor Standards Investigation Summary Sheet, is the first page of the report; and

(B) The agency head must process the report as follows:

(*1*) The contracting officer must send a detailed enforcement report to the Administrator, Wage and Hour

Division, within 60 days after completion of the investigation, if—

(*i*) A contractor or subcontractor underpaid by $1,000 or more;

(*ii*) The contracting officer believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the Construction Wage Rate Requirements statute);

(*iii*) The contractor or subcontractor has not made restitution; or

(*iv*) Future compliance has not been assured.

(*2*) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (c)(1)(vii)(B)(*1*) of this subsection exist, submit a summary report to the Administrator, Wage and Hour Division. The report must include—

(*i*) A summary of any violations;

(*ii*) The amount of restitution paid;

(*iii*) The number of workers who received restitution;

(*iv*) The amount of liquidated damages assessed under the Contract Work Hours and Safety Standards statute;

(*v*) Corrective measures taken; and

(*vi*) Any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(*3*) If none of the conditions in paragraphs (c)(1)(vii)(B)(*1*) or (*2*) of this subsection are present, close the case and retain the report in the appropriate contract file.

(*4*) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001), forward the report (supplemented if necessary) to the Attorney General of the United States for prosecution if the facts warrant. Notify the Administrator, Wage and Hour Division, when the report is forwarded for the Attorney General's consideration.

(2) *Department of Labor investigations*. The Department of Labor will furnish the contracting officer an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose—

(i) Underpayments totaling $1,000 or more;

(ii) Aggravated or willful violations (or, when the contracting officer believes that the contractor has disregarded its obligations to employees and subcontractors under the Construction Wage Rate Requirements statute); or

(iii) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards statute.

(3) *Other investigations*. The Department of Labor will provide a letter summarizing the findings of the investigation to the contracting officer for all investigations that are not described in paragraph (c)(2) of this subsection.

(4) *Cooperation*.

(i) The contracting agency must cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor.

(ii) When requested, the contracting agency must furnish to the Secretary any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(iii) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer must inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Construction Wage Rate Requirements

statute, the Contract Work Hours and Safety Standards statute, or the Copeland (Anti-Kickback) Act.

(d) *Report*. A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Construction Wage Rate Requirements statute and Contract Work Hours and Safety Standards statute is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports must only contain information as to the enforcement actions of the contracting agency and must be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

(e) *Withholding payment*.

(1) If the contractor fails to submit copies of its or its subcontractors' payrolls promptly under clause 52.222-8, the contracting officer must, from any payment due to the contractor, from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either the Construction Wage Rate Requirements statute or Contract Work Hours and Safety Standards statute requirements, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(2) (i) If the contracting officer believes a violation exists (see paragraph (a) of this subsection), or upon request of the Department of Labor, the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards statute. (See 22.302.)

(ii) Use withheld funds as provided in paragraph (g) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(f) *Suspension of contract payments*. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Construction Wage Rate Requirements statute and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, must suspend any further payment, advance,

or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(g) *Disposition of contract payments withheld or suspended —*

(1) *Forwarding wage underpayments to the Secretary*. Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must follow the Department of Labor guidance published in Wage and Hour Division, All Agency Memorandum (AAM) No. 215, Streamlining Claims for Federal Contractor Employees Act. The AAM No. 215 can be obtained at *http://www.dol.gov/whd/govcontracts/dbra.htm;* under Guidance there is a link for All Agencies Memoranda (AAMs).

(2) *Returning of withheld funds to contractor*. When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) *Liquidated damages*. Upon final administrative determination, the contracting officer must dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

(h) *Reporting terminations*. If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency must submit a report to the Administrator, Wage and Hour Division. The report must include the number of the terminated contract.

(i) *Disputes*.

(1) Disputes between the contracting officer and contractors concerning construction contract labor standards enforcement will be settled by the Department of Labor.

(2) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR part 6, and hearings before the Labor Department Administrative Review Board are conducted in accordance with 29 CFR part 7.

Subpart 22.5 - Project Labor Agreements for Federal Construction Projects.

22.500 Scope.

This subpart prescribes policies and procedures to implement Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, dated February 4, 2022 (3 CFR, 2023 Comp., pp 335-338).

22.501 Definitions.

As used in this subpart --

Construction means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members.

Large-scale construction project means a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is $35 million or more.

Project labor agreement means 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 described in 29 U.S.C. 158(f).

22.502 Presolicitation.

22.502-1 Policy.

(a) Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects, requires agencies to use project labor agreements in large-scale construction projects to promote economy and efficiency in the administration and completion of Federal construction projects.

(b) When awarding a contract in connection with a large-scale construction project, agencies must require use of project labor agreements for contractors and subcontractors engaged in construction on the project, unless an exception at 22.502-2(d) applies.

(c) An agency may require the use of a project labor agreement on projects where the total cost to the Federal Government is less than that for a large-scale construction project, if appropriate.

(1) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(i) Advance the Federal Government's interest in achieving economy and efficiency in Federal 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

(ii) Be consistent with law.

(2) Agencies may consider the following factors in deciding whether the use of a project labor agreement is appropriate for a construction project where the total cost to the Federal Government is less than that for a large-scale construction project:

(i) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(ii) There is a shortage of skilled labor in the region in which the construction project will be sited.

(iii) Completion of the project will require an extended period of time.

(iv) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(v) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

(vi) Any other factors that the agency decides are appropriate.

(d) For indefinite-delivery indefinite-quantity (IDIQ) contracts the use of a project labor agreement may be required on an order-by-order basis rather than for the entire

contract. For an order at or above $35 million an agency must require the use of a project labor agreement unless an exception applies. See 22.502-2(d)(3) and 22.502-3(b)(3).

22.502-2 General requirements.

(a) *General.* Project labor agreements established under this subpart must fully conform to all statutes, regulations, and Executive orders.

(b) *Requirements.* A project labor agreement 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 similar 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; and

(6) Include any additional requirements as the agency deems necessary to satisfy its needs.

(c) *Labor organizations.* An agency may not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

(d) *Exceptions to project labor agreement requirements* —

(1) *Exception.* The senior procurement executive may grant an exception from the requirements at 22.502-1(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and

efficiency in Federal procurement. The exception must be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

(2) *Considerations.* When determining whether the exception in paragraph (d)(1)(ii) of this subsection applies, contracting officers must consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement (*e.g.,* costs of labor or materials, supply chain costs). Agencies may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.

(3) *Timing of the exception —*

(i) *Contracts other than IDIQ contracts.* The exception must be granted for a particular contract by the solicitation date.

(ii) *IDIQ contracts*. An exception must be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions must be granted for each order by the time of the notice of the intent to place an order (*e.g.,* 16.505(b)(1)).

22.502-3 Solicitation provision and contract clause.

When a project labor agreement is used for a construction project, the contracting officer must—

(a) (1) Insert the provision at 52.222-33, Notice of Requirement for Project Labor Agreement, in solicitations containing the clause 52.222-34, Project Labor Agreement.

(2) Use the provision with its Alternate I if the agency will require the submission of a project labor agreement from only the apparent successful offeror, prior to contract award.

(3) Use the provision with its Alternate II if an agency allows submission of a project labor agreement after contract award except when Alternate III is used.

(4) Use the provision with its Alternate III when Alternate II of 52.222-34 is used.

(b) (1) Insert the clause at 52.222-34, Project Labor Agreement, in solicitations and contracts associated with the construction project.

(2) Use the clause with its Alternate I if an agency allows submission of the project labor agreement after contract award except when Alternate II is used.

(3) Use the clause with its Alternate II in IDIQ contracts when the agency will have project labor agreements negotiated on an order-by-order basis and anticipates one or more orders may not use a project labor agreement.

Subpart 22.6 - Contracts for Materials, Supplies, Articles, and Equipment.

22.601 Presolicitation.

22.601-1 Statutory requirement.

Except for the exemptions at 22.601-3, all contracts subject to 41 U.S.C. chapter 65 (the statute), and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding $20,000, must include or incorporate by reference the stipulations required by the statute pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

22.601-2 Applicability.

The requirements of this subpart apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) for the manufacture or furnishing of supplies that—

(a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;

(b) Exceed or may exceed $20,000; and

(c) Are not exempt under 22.601-3.

22.601-3 Exemptions.

(a) Contracts for acquisition of the following supplies are statutorily exempt from the requirements of this subpart:

(1) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase “in the open market” generally (such as commercial products and commercial services, see part 12); or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency.

(2) Perishables, including dairy, livestock, and nursery products.

(3) Agricultural or farm products processed for first sale by the original producers.

(4) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

(b) Contracts for the following acquisitions are regulatorily exempt from the requirements of this subpart (see 41 CFR 50-201.603):

(1) Public utility services.

(2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.

(3) Purchases against the account of a defaulting contractor where the stipulations of the statute were not included in the defaulted contract.

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

(c) (1) Upon the request of the agency head, the Secretary may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the statute's stipulations; *provided,* that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards must be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. All other requests must be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

22.601-4 Rulings and interpretations of the statute.

As authorized by the statute, the Secretary of Labor has issued rulings and interpretations concerning the administration of the statute (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

(a) If a contract for $20,000 or less is subsequently modified to exceed $20,000, the contract becomes subject to the statute for work performed after the date of the modification.

(b) If a contract for more than $20,000 is subsequently modified by mutual agreement to $20,000 or less, the contract is not subject to the statute for work performed after the date of the modification.

(c) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the statute in contracts in excess of $20,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.

(d) If a contract subject to the statute is awarded to a contractor operating Government-owned facilities, the stipulations of the statute affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(e) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the statute unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed $20,000. A determination must be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

22.601-5 Solicitation provisions and contract clauses.

Insert the clause at 52.222-20, Contracts for Materials, Supplies, Articles, and Equipment, in solicitations and contracts covered by the statute (see 22.601-2 and 22.601-3).

22.602 Postaward.

In the event of a violation of a stipulation required under 41 U.S.C. Chapter 65, the contracting officer must, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 29 CFR part 1, Appendix B), and furnish any information available.

Subpart 22.7 – Reserved.

Subpart 22.8 – Reserved.

Subpart 22.9 - Nondiscrimination Because of Age.

22.901 Presolicitation.

22.901-1 General.

Executive Order 11141, February 12, 1964 (29 FR 2477), states that the Government policy is as follows:

(a) Contractors and subcontractors must not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, must not specify in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(c) Agencies will bring this policy to the attention of contractors. The use of contract clauses is not required.

22.902 Postaward.

Agencies must bring complaints regarding a contractor's compliance with the policy in Executive Order 11141 to that contractor's attention (in writing, if appropriate), stating the policy, indicating that the contractor's compliance has been questioned, and requesting that the contractor take any appropriate steps that may be necessary to comply.

Subpart 22.10 - Service Contract Labor Standards.

22.1000 Scope.

This subpart prescribes policies and procedures implementing the provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards (formerly known as the Service Contract Act of 1965) and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).

22.1001 Definitions.

As used in this subpart—

Contractor includes a subcontractor at any tier whose subcontract is subject to the provisions of the statute.

Multiple year contracts means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multi-year contracts (see 17.102).

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession within a foreign country (29 CFR 4.112).

22.1002 Presolicitation.

22.1002-1 Applicability.

(a) [Reserved]

(b) This subpart applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted in paragraphs (c) through (g) of this subsection, or any subcontract at any tier thereunder. More information on “principal purpose” can be found here.

(c) The Service Contract Labor Standards statute does not apply to—

(1) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(2) Any work required to be done in accordance with the provisions of 41 U.S.C. chapter 65;

(3) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for furnishing services by radio, telephone, or cable companies subject to the Communications Act of 1934;

(5) Any contract for public utility services;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(7) Any contract for operating postal contract stations for the U.S. Postal Service.

(d) In addition to the statutory exemptions cited in paragraph (c) of this subsection, the Secretary has exempted the following types of contracts from all provisions of the Service Contract Labor Standards statute:

(1) Contracts entered into by the United States 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 an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(e) (1) The Secretary has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (e)(2) of this subsection are met:

(i) Automated data processing equipment and office information/word processing systems.

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Product or Service Code (PSC) 6515, “Medical and Surgical Instruments, Equipment, and Supplies;” PSC 6525, “Imaging Equipment and Supplies: Medical, Dental, Veterinary;” PSC 6630, “Chemical Analysis Instruments;” and PSC 6655, “Geophysical Instruments,” are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) The exemption at paragraph (e)(1) of this subsection applies if all the following conditions are met for a contract (or a subcontract):

(i) The items of equipment to be serviced under the contract are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)—

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iii) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing the same equipment of commercial customers.

(iv) The apparent successful offeror certifies to the conditions in paragraph (c)(2)(i) through (iii) of the provision at 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.

(3) (i) For source selections where the contracting officer has established a competitive range, if the contracting officer determines that one or more of the conditions in paragraphs (e)(2)(i) through (iii) of an offeror's certification will not be met, the contracting officer must identify the deficiency to the offeror before receipt of the final proposal revisions. Unless the offeror provides a revised offer acknowledging applicability of the Service Contract

Labor Standards statute or demonstrating to the satisfaction of the contracting officer an ability to meet all required conditions for exemption, the offer will not be further considered for award.

(ii) The contracting officer must determine in writing the applicability of this exemption to the contract before contract award. If the apparent successful offeror will meet all conditions in paragraph (e)(2) of this subsection, the contracting officer must make an affirmative determination and award the contract without the otherwise applicable Service Contract Labor Standards clause(s).

(iii) If the apparent successful offeror does not certify to the conditions in paragraph (e)(2)(i) through (iii) of this subsection, the contracting officer must incorporate in the contract the Service Contract Labor Standards clause (see 22.1002-2(b)) and, if the contract will exceed $2,500, the appropriate Department of Labor wage determination (see 22.1002-3).

(4) (i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (e)(2) of this subsection has not been met, the exemption shall be deemed inapplicable, and the contract must become subject to the Service Contract Labor Standards statute, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) must be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (e)(2) of this subsection have not been met with respect to a subcontract, the exemption must be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Service Contract Labor Standards statute, effective as of the date of the subcontract award.

(f) (1) Except as provided in paragraph (f)(5) of this subsection, the Secretary has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (f)(2) of this subsection are met:

(i) Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts or subcontracts to operate a Government motor pool or similar facility).

(ii) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which must not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the Construction Wage Rate Requirements statute, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

(v) Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services).

(vi) Real estate services, including real property appraisal services, related to housing Federal agencies or disposing of real property owned by the Government.

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or military personnel in buying and selling homes (which must not include actual moving or storage of household goods and related services).

(2) The exemption for the services in paragraph (f)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i) (A) Except for services identified in paragraph (f)(1)(iv) of this subsection, the contractor will be selected for award based on other factors in addition to price or cost, with the combination of other factors at least as important as price or cost; or

(B) The contract will be awarded on a sole source basis.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)—

> (A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
>
> (B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iv) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(v) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing commercial customers.

(vi) The contracting officer (or contractor with respect to a subcontract) determines in advance before issuing the solicitation, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the conditions in paragraph (f)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the contracting officer (or contractor with respect to a subcontract) must consider the practices of the existing

contractor in making a determination regarding the conditions in paragraphs (f)(2)(ii) through (v) of this subsection.

(vii) (A) The apparent successful offeror certifies that the conditions in paragraphs (f)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(*1*) In the competitive range, if discussions are to be conducted (see FAR 15.306)(c)); or

(*2*) Considered responsive, if award is to be made without discussions (see FAR 15.306(a)).

(3) (i) If the apparent successful offeror does not certify to the conditions, the contracting officer must insert in the contract the applicable Service Contract Labor Standards clause(s) (see 22.1002-2(b)) and, if the contract will exceed $2,500, the appropriate Department of Labor wage determination (see 22.1002-3).

(ii) The contracting officer must award the contract without the otherwise applicable Service Contract Labor Standards clause(s) if—

(A) The apparent successful offeror certifies to the conditions in paragraphs (f)(2)(ii) through (v) of this subsection;

(B) The contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(*1*) In the competitive range, if discussions are to be conducted (see FAR 15.306); or

(*2*) Considered responsive, if award is to be made without discussions (see FAR 15.306(a)); and

(C) The contracting officer has no reason to doubt the certification.

(iii) If the conditions in paragraph (f)(3)(ii) of this subsection are not met, then the contracting officer must resolicit, amending the solicitation by removing the exemption provision from the solicitation as prescribed at

22.1002-2(e)(3). The contract will include the applicable Service Contract Labor Standards clause(s) as prescribed at 22.1002-2(b) and, if the contract will exceed $2,500, the appropriate Department of Labor wage determination (see 22.1002-3).

(4) (i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (f)(2) of this subsection have not been met, the exemption shall be deemed inapplicable, and the contract must become subject to the Service Contract Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) must be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (f)(2) of this subsection have not been met with respect to a subcontract, the exemption must be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Service Contract Labor Standards statute, effective as of the date of the subcontract award.

(5) The exemption at paragraph (f)(1) of this subsection does not apply to solicitations and contracts (subcontracts)—

(i) Awarded under 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled (see part 8).

(ii) For the operation of a Government facility, or part of a Government facility (but may be applicable to subcontracts for services); or

(iii) Subject to 41 U.S.C. 6707(c) (see 22.1002-3(b)(2)).

(g) See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Service Contract Labor Standards statute must be submitted in writing through contracting channels and the agency labor advisor to the Wage and Hour Administrator.

(h) If the contracting officer questions the applicability of the Service Contract Labor Standards statute to an acquisition, the contracting officer must request the advice of the agency labor advisor. Unresolved questions must be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1002-2 Solicitation provisions and contract clauses.

(a) (1) Service contracts over $2,500 must contain mandatory provisions regarding minimum wages and fringe benefits (see coverage on wage determinations at 22.1002-3), safe and sanitary working conditions, notification to employees of the minimum allowable compensation (see 22.1003), and equivalent Federal employee classifications and wage rates (see paragraph (c) of this subsection).

(2) Under 41 U.S.C. 6707(d), service contracts may not exceed 5 years.

(b) (1) Insert the clause at 52.222-41, Service Contract Labor Standards, in solicitations and contracts (except as provided in paragraph (b)(2) of this subsection) if the contract is subject to the Service Contract Labor Standards statute and is—

(i) Over $2,500; or

(ii) For an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be $2,500 or less.

(2) The contracting officer must not insert the clause at 52.222-41 (or any of the associated Service Contract Labor Standards statute clauses as prescribed in this subsection for possible use when 52.222-41 applies) in the resultant contract if—

(i) The solicitation includes the provision at—

(A) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification; or

(B) 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification; and

(ii) The contracting officer has made the determination, in accordance with paragraphs (e)(3) or (f)(3) of subsection 22.1002-1, that the Service Contract Labor Standards statute does not apply to the contract. (In such case, insert the clause at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration,

or Repair of Certain Equipment—Requirements, or 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(c) (1) Insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over $2,500 and the Service Contract Labor Standards statute is applicable.

(2) The statement required under the clause must set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule—white collar) and/or 5 U.S.C. 5341 (Wage Board—blue collar) were applicable.

(d) (1) Insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at 52.222-41, Service Contract Labor Standards, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see 22.1002-3(a) and (b)). Contracting officers must ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (d) (1), (2) and (3)), or 52.222-44 (subparagraphs (b) (1) and (2)).

(2) The contracting officer must insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at 52.222-41,

Service Contract Labor Standards, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-3(a) and (b)).

(3) The clauses prescribed in paragraph (d)(1) of this subsection cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year.

(e) (1) Insert the provision at 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification, in solicitations that—

(i) Include the clause at 52.222-41, Service Contract Labor Standards; and

(ii) The contract may be exempt from the Service Contract Labor Standards statute in accordance with 22.1002-1(e).

(2) The contracting officer must insert the clause at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements—

(i) In solicitations that include the provision at 52.222-48; and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with 22.1002-1(e)(3), that the Service Contract Labor Standards statute does not apply.

(3) (i) Except as provided in paragraph (e)(3)(ii) of this subsection, the contracting officer must insert the provision at 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification, in solicitations that—

(A) Include the clause at 52.222-41, Service Contract Labor Standards, and

(B) The contract may be exempt from the Service Contract Labor Standards statute in accordance with 22.1002-1(f).

(ii) When resoliciting in accordance with 22.1002-1(f)(3)(iii), amend the solicitation by removing the provision at 52.222-52 from the solicitation.

(4) The contracting officer must insert the clause at 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at 52.222-52; and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with 22.1002-1(e)(3), that the Service Contract Labor Standards statute does not apply.

(f) Insert the clause at 52.222-49, Service Contract Labor Standards—Place of Performance Unknown, if using the procedures prescribed in 22.1002-3(a)(2).

22.1002-3 Wage determinations.

The contracting officer must obtain wage determinations for each new solicitation and contract in excess of $2,500.

(a) *Wage determinations based on prevailing rates.* Contractors performing on contracts to which no predecessor contractor's collective bargaining agreement applies must pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act. If the Wage Determinations at the SAM.gov database do not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(1) If the place of performance is unknown, the contracting officer must obtain a wage determination for each locality where services may be performed.

(2) If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(i) Complete the fill-in of the clause at 52.222-49, Service Contract Labor Standards-Place of Performance Unknown (see 22.1002-2(f)).

(ii) The procedures in 14.304 must apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(iii) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer must—

(A) Obtain wage determinations for the additional places of performance; and

(B) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(iv) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer must—

(A) Award the contract;

(B) Obtain a wage determination; and

(C) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222-49, Service Contract Labor Standards-Place of Performance Unknown.

(3) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer must obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations. If necessary, the contracting officer must extend the time for submission of final offers.

(b) *Wage determinations based on collective bargaining agreements*.

(1) Early in the acquisition cycle, the contracting officer must determine whether 41 U.S.C. 6707(c) affects the new acquisition. The contracting officer must determine whether there is a predecessor contract covered by the Service Contract Labor Standards statute and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(2) 41 U.S.C. 6707(c) provides that a 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 a predecessor contractor under the following conditions-

(i) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed;

(ii) The services will be performed in the same locality; and

(iii) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(3) The application of 41 U.S.C. 6707(c) is subject to the following limitations:

(i) 41 U.S.C. 6707(c) will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(ii) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement must not be effective for the purposes of 41 U.S.C. 6707(c) under the following conditions:

(A) (*1*) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see 22.1003(b)(1)); or

(*2*) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see 22.1003(b)(2)); and

(B) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see 22.1004-6).

(4) If 41 U.S.C. 6707(c) applies, the contracting officer must obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at 52.222-41, Service Contract Labor Standards, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.)

(5) 41 U.S.C. 6707(c) will not apply if the Secretary of Labor determines—

(i) After a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality; or

(ii) That the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations. The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(6) If the contracting officer's review of the incumbent’s collective bargaining agreement indicates that its monetary provisions may be substantially at variance or may not have been reached as a result of arm's length bargaining, the contracting

officer must immediately contact the agency labor advisor to consider if further action is warranted.

(7) 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 contracting officer must identify the locations to which the agreements apply.

(8) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer must access Wage Determinations at *SAM.gov* to obtain the prevailing wage determination for those service employee classifications that are not covered by the collective bargaining agreement. The contracting officer must separately list in the solicitation and contract the service employee classifications—

(i) Subject to the collective bargaining agreement, and

(ii) Not subject to any collective bargaining agreement.

(9) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and the Department of Labor is unable to provide the wage determination by the latest date needed to maintain the acquisition schedule, the contracting officer must incorporate the collective bargaining agreement itself in a solicitation and include a wage determination referencing that collective bargaining agreement created by use of the Wage Determinations at *SAM.gov* website.

(c) *Requests for hearing*.

(1) A contracting agency or other interested party may request a hearing on an issue presented in paragraph (b)(5)(i) of this subsection. To obtain a hearing for the contracting agency, the contracting officer must submit a written request through appropriate channels (ordinarily the agency labor advisor) to: Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(2) A request for a substantial variance hearing must include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request must also include—

(i) The number of the wage determinations at issue;

(ii) The name of the contracting agency whose contract is involved;

(iii) A brief description of the services to be performed under the contract;

(iv) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;

(v) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;

(vi) Names and addresses (to the extent known) of interested parties; and

(vii) Any other data required by the Administrator.

(3) A request for an arm's length hearing must include—

(i) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;

(ii) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and

(iii) Names and addresses (to the extent known) of interested parties.

(4) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:

(i) For sealed bid contracts, more than 10 days before the award of the contract; or

(ii) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

22.1002-4 Executive Orders 13658 and 14026.

Executive Order (E.O.) 13658 established minimum wages for certain workers at $10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to $11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to $15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.10 statutory wage determination amount.

22.1003 Evaluation and award.

(a) *Periodic revisions to wage determinations by DOL*.

(1) The Wage and Hour Administrator may issue revisions to prevailing wage determinations periodically. The need for inclusion of a revised prevailing wage determination in a solicitation is determined by the date of receipt of the revised prevailing wage determination by the contracting agency. (Note the distinction between receipt by the agency and receipt by the contracting officer which may occur later.)

(i) For purposes of using Wage Determinations at *SAM.gov*, the time of receipt by the contracting agency must be the first day of publication of the revised prevailing wage determination on the website.

(ii) For purposes of using the e98 process, the time of receipt by the contracting agency must be the date the agency receives actual notice of a new or revised prevailing wage determination from the Department of Labor as an e98 response.

(2) In selecting a prevailing wage determination from the Wage Determinations at *SAM.gov* website for use in a solicitation or other contract action, the contracting officer must monitor the Wage Determinations at *SAM.gov* website to determine whether the applicable wage determination has been revised. Revisions published on the Wage Determinations at *SAM.gov* website or otherwise communicated to the contracting officer within the timeframes prescribed at paragraphs (a)(3) and (4) of this section are effective and must be included in the

resulting contract. Monitoring can be accomplished by use of the Wage Determinations at *SAM.gov* website's "Alert Service".

(3) The following must apply when contracting by sealed bidding: a revised prevailing wage determination shall not be effective if it is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(4) For contractual actions other than sealed bidding, a revised prevailing wage determination received by the contracting agency after award of a new contract or a modification as specified in 22.1004-1(c) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(5) If the contracting officer has submitted an e98 to the Department of Labor requesting a prevailing wage determination and has not received a response within 10 days, the contracting officer must contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.)

(b) *Wage determinations based on collective bargaining agreements*.

(1) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under 41 U.S.C. 6707(c) if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation.

(2) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under 41 U.S.C. 6707(c) if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in 22.1004-1(c), 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 collective bargaining agreement received by the agency not less than 10 days before commencement of the work must be effective for purposes of the successor contract under 41 U.S.C. 6707(c).

(3) The limitations in paragraphs (b)(1) and (2) of this section must apply only if timely notification required in 22.1004-6 has been given.

(4) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the contracting officer must contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.) If the Department of Labor is unable to provide the wage determination by the latest date needed to maintain the acquisition schedule, the contracting officer must incorporate the collective bargaining agreement itself in a solicitation or other contract action (*e.g.*, exercise of option) and include a wage determination referencing that collective bargaining agreement created by use of the Wage Determinations at *SAM.gov* website.

(c) *Delays*. If a wage determination was obtained through the e98 process, and bid opening has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted e98, the contracting officer must submit a new e98. Any revision of a wage determination received by the contracting agency as a result of that communication must supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1003(a)(3) and (4).

(d) *Notification to contractors and employees*. The contracting officer must take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(1) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract

performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Service Contract Labor Standards statute and satisfies the notice requirements in paragraph (g) of the clause at 52.222-41, Service Contract Labor Standards.

(2) Attach any applicable wage determination to Publication WH-1313.

22.1004 Postaward.

22.1004-1 Revisions to wage determinations.

(a) The Wage and Hour Administrator may issue revisions to prevailing wage determinations periodically. The need for inclusion of a revised prevailing wage determination in a contract is determined by the date of receipt of the revised prevailing wage determination by the contracting agency.

(b) If a wage determination was obtained through the e98 process, and commencement of work under a negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted e98, the contracting officer must submit a new e98. Any revision of a wage determination received by the contracting agency as a result of that communication must supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1003(a)(3) and (4).

(c) The contracting officer must obtain wage determinations for each contract modification which brings the contract above $2,500 and—

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

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

(d) The contracting officer must obtain wage determinations for each multiple year contract in excess of $2,500 upon the—

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

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division.

(e) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and the Department of Labor is unable to provide the wage determination by the latest date needed to maintain the acquisition schedule, the contracting officer must incorporate the collective bargaining agreement itself in a contract action (*e.g.*, exercise of option) and include a wage determination referencing that collective bargaining agreement created by use of the Wage Determinations at *SAM.gov* website.

(f) If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Labor Standards statute did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, must include in the contract the clause at 52.222-41 and any applicable wage determination issued by the Administrator. If the contract is subject to 41 U.S.C. 6707(f), the Administrator may require retroactive application of that wage determination. The contracting officer must equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

22.1004-2 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer must require the contractor to classify the unlisted classes so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 52.222-41, Service Contract Labor Standards). The contractor must initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor must submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate. The contracting officer must review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent

information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the 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) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. 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.)

(c) Subminimum rates for apprentices, student learners, and disabled workers are permissible in accordance with paragraph (q) of the clause at 52.222-41, Service Contract Labor Standards.

22.1004-3 Withholding of contract payments.

(a) Any violations of the clause at 52.222-41, Service Contract Labor Standards, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract.

(b) The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Deputy Regional Administrator, Wage and Hour Division, Department of Labor, must withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Labor Standards statute or not) with the contractor.

(c) The agency must place the amount withheld in a deposit fund. Such withheld funds must be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), an Administrative Law Judge, or the Administrative Review Board. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

22.1004-4 Termination for default.

As provided by the Service Contract Labor Standards statute, any contractor failure to comply with the requirements of the contract clauses related to the Service Contract Labor Standards statute may be grounds for termination for default (see paragraph (k) of the clause at 52.222-41, Service Contract Labor Standards).

22.1004-5 Enforcement.

(a) Persons or firms found to be in violation of the Service Contract Labor Standards statute will have an active exclusion record contained in the System for Award Management (see part 9). No Government contract may be awarded to any violator so listed because of a violation of the Service Contract Labor Standards statute, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

(b) The contracting officer must cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies must furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer must promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints must not be disclosed to the employer.

(c) Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222-41, Service Contract Labor Standards, and not under the clause at 52.233-1, Disputes.

22.1004-6 Notification to interested parties under collective bargaining agreements.

(a) The contracting officer 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 contracting officer must give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in 22.1003(b)(1) and (2) to apply. The contracting officer must retain a copy of the notification in the contract file.

22.1004-7 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish 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, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222-41, Service Contract Labor Standards.) At the commencement of the succeeding contract, the contracting officer must provide a copy of the list to the successor 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.

Subpart 22.11 – [Reserved]

Subpart 22.12 - [Reserved]

Subpart 22.13 - Equal Opportunity for Veterans

22.1300 Scope.

This subpart prescribes policies and procedures for implementing the following:

(a) The Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4211 and 4212) (the Act).

(b) The Veterans Employment Opportunities Act of 1998, Public Law 105-339.

(c) Executive Order 11701, January 24, 1973 (3 CFR, 1971-1975 Comp., p. 752).

(d) The regulations of the Secretary of Labor (41 CFR parts 60-300 and 61-300).

22.1301 Definitions.

As used In this subpart --

Active duty wartime or campaign badge 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 the laws administered by the Department of Defense.

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 States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

Disabled veteran means—

(1) 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

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

Protected veteran means a veteran who is protected under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212; specifically, a veteran who may be

classified as a “disabled veteran,” “recently separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran,” as defined by this section.

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.

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.

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.

22.1302 Presolicitation.

22.1302-1 Requirements.

(a) (1) Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to—

(i) List all employment openings, with the appropriate employment service delivery system where the opening occurs, except for—

(A) Executive and senior management positions;

(B) Positions to be filled from within the contractor's organization; and

(C) Positions lasting three days or less;

(ii) Take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a protected veteran, in all employment practices;

(iii) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans; and

(iv) Establish a hiring benchmark and apply it to hiring of protected veterans in each establishment, on an annual basis, in the manner prescribed in the regulations of the Secretary of Labor.

(2) The Act applies to all contracts and subcontracts for personal property and nonpersonal services (including construction) of $200,000 or more except—

(i) As waived by the Secretary of Labor; or

(ii) In any contract with a State or local government (or any agency, instrumentality, or subdivision), the Act does not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(b) The Act requires submission of the annual VETS-4212, Federal Contractor Veterans' Employment Report (VETS-4212 Report) in all cases where the contractor or subcontractor has received an award of $200,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

22.1302-2 Solicitation provision and contract clauses.

(a) (1) Insert the clause at 52.222-35, Equal Opportunity for Veterans, in solicitations and contracts if the expected value is $200,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States; or

(ii) The Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, has waived, in accordance with 22.1302-3(a) or the head of the agency has waived, in accordance with 22.1302-3(b), all of the terms of the clause.

(2) If the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222-37, Employment Reports on Veterans, in solicitations and contracts containing the clause at 52.222-35, Equal Opportunity for Veterans.

22.1302-3 Waivers.

(a) The Director, Office of Federal Contract Compliance Programs, Department of Labor, may waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, for—

(1) Any contract if a waiver is in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

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

(b) The head of the agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency must notify the Deputy Assistant Secretary of Labor in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor may withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For procurements entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

22.1303 Evaluation and award.

(a) Except for contracts for commercial products or commercial services, or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted the required annual VETS-4212, with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

(b) To verify if a proposed contractor is current with its submission of the VETS-4212 Report, the contracting officer must query the Department of Labor's VETS-4212 Database via the Internet at *http://www.dol.gov/vets/vets4212.htm* under “Filing Verification”.

22.1304 Postaward.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (see *http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm*.

(b) If performance under the clause at 52.222-35, Equal Opportunity for Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

(c) The Director, Office of Federal Contract Compliance Programs, is responsible for investigating complaints.

(d) The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Equal Opportunity for Veterans. These sanctions (see 41 CFR 60-300.66) may include—

(1) Withholding progress payments;

(2) Termination or suspension of the contract; or

(3) Debarment of the contractor.

Subpart 22.14 - Employment of Workers with Disabilities

22.1400 Scope.

(a) This subpart prescribes policies and procedures for implementing section 503 of the Rehabilitation Act of l973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR part 60-741).

(b) Section 503 of the Act applies to all Government contracts in excess of $20,000 for supplies and services (including construction) except as waived by the Secretary of Labor under 22.1401-3.

(c) In this subpart, the terms *contract* and *contractor* include *subcontract* and *subcontractor*.

22.1401 Presolicitation.

22.1401-1 Requirements.

Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to—

(a) Take affirmative action to employ, and advance in employment, qualified individuals with disabilities, and to otherwise treat qualified individuals without discrimination based on their physical or mental disability;

(b) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities; and

(c) Compare the utilization of individuals with disabilities in their workforces to the utilization goal, as prescribed in the regulations of the Secretary of Labor, on an annual basis.

22.1401-2 Contract clause.

(a) (1) Insert the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, in solicitations and contracts that exceed or are expected to exceed $20,000, except when—

(i) Both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

(ii) The Director of OFCCP or agency head has waived, in accordance with 22.1401-3(a) or (b) all the terms of the clause.

(2) If the Director of OFCCP or agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1401-3(a) or (b), use the basic clause with its *Alternate I*.

(b) The requirements of the clause at 52.222-36 in any contract with a State or local government (or any agency, instrumentality, or subdivision) must not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

22.1401-3 Waivers.

(a) The Director of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (Director of OFCCP), may waive the application of any or all of the terms of the clause at 52.222-36 for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

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

(b) The head of an agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency must notify the Director of OFCCP in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director of OFCCP to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of formal sealed bidding unless it is made more than 10 days before the date set for bid opening.

22.1402 Postaward.

(a) The contracting officer must furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The contracting officer may obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

(b) If performance under the clause at 52.222-36, Equal Opportunity for Workers with Disabilities, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

(c) (1) Following agency procedures, the contracting office must forward any complaints received about the administration of section 503 of the Rehabilitation Act of l973, as amended (29 U.S.C. 793) to—

(i) Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; or

(ii) Any OFCCP regional or area office.

(2) The OFCCP must institute investigation of each complaint and must be responsible for developing a complete case record.

(d) The contracting officer must take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Equal Opportunity for Workers with Disabilities. These sanctions (see 41 CFR 60-741.66) may include—

(1) Withholding from payments otherwise due;

(2) Termination or suspension of the contract; or

(3) Debarment of the contractor.

Subpart 22.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

22.1501 Definitions.

As used in this subpart—

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor means the list published by the Department of Labor in accordance with Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The list identifies products, by their country of origin, that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.

22.1502 Presolicitation.

22.1502-1 Policy.

Agencies must take appropriate action to enforce the laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor, consistent with 19 U.S.C. 1307, 29 U.S.C. 201, et seq., and 41 U.S.C. chapter 65. Agencies should make every effort to avoid acquiring such products.

22.1502-2 Solicitation provision and contract clause.

(a) (1) Except as provided in paragraph (c) of this subsection, insert the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor. The contracting officer must identify in paragraph (b) of the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products any applicable end

products and countries of origin from the List. For solicitations estimated to equal or exceed $50,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified in paragraph (c) of this subsection, in accordance with the specified thresholds.

(2) Insert the clause at 52.222-19, Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase threshold.

(b) When issuing a solicitation for supplies expected to exceed the micro-purchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) (www.dol.gov/ilab/) (see 22.1502-2(a)(1). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.

(c) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

(1) Israel, and the anticipated value of the acquisition is $50,000 or more (see part 25 for the Israeli Trade Act);

(2) Mexico, and the anticipated value of the acquisition is $105,767 or more (see part 25 for trade agreements); or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is $174,000 or more (see part 25 for trade agreements).

22.1503 Evaluation and award.

(a) Except as provided in paragraph (c) of 22.1502-2, before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—

(1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or

(2) (i) 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 to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.

(b) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.

(c) Proper certification will not prevent the head of an agency from imposing remedies in accordance with 22.1504 if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.

22.1504 Postaward.

(a) Whenever a contracting officer 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 awarded subject to the certification required 22.1502-2(a)(1) and 22.1503(a), the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed 22.1502-2(c), under a contract exceeding the applicable threshold.

(b) The Government may impose remedies set forth in paragraph (c) of this section for the following violations (note that the violations in paragraphs (b)(3) and (b)(4) of this section go beyond violations of the requirements relating to certification of end products):

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

(2) The contractor has failed to cooperate as required in accordance with the clause at 52.222-19, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.

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

(4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(c) The Government may impose the following remedies for violations:

(1) The contracting officer may terminate the contract.

(2) The suspending and debarring official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The suspending and debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

Subpart 22.16 - Notification of Employee Rights Under the National Labor Relations Act.

22.1601 Definitions.

United States, as used in this subpart, means the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

22.1602 Presolicitation.

22.1602-1 Policy.

(a) This subpart prescribes policies and procedures to implement Executive Order 13496, dated January 30, 2009 (74 FR 6107, February 4, 2009). Executive Order 13496

requires contractors to post a notice informing employees of their rights under Federal labor laws.

(b) The Secretary has determined that the notice must contain employee rights under the National Labor Relations Act (Act), 29 U.S.C. 151 et seq. The Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self-organize, and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

(c) The requirements of this subpart do not apply to—

(1) Contracts under the simplified acquisition threshold;

(2) Subcontracts of $10,000 or less; and

(3) Contracts or subcontracts for work performed exclusively outside the United States.

(d) (1) If the Secretary finds that the requirements of the Executive Order impair the ability of the Government to procure goods and services on an economical and efficient basis or if special circumstances require an exemption in order to serve the national interest, the Secretary may exempt a contracting department or agency, or groups of departments or agencies, from the requirements of any or all of the provisions of this Executive Order with respect to a particular contract or subcontract, or any class of contracts or subcontracts, including the requirement to include the clause at 52.222-40, or parts of that clause, in contracts.

(2) Requests for exemptions may be submitted in accordance with Department of Labor regulations at 29 CFR 471.3.

22.1602-2 Contract clause.

(a) Insert the clause at 52.222-40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial products, commercial services, and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

(b) A contracting agency may modify the clause at 52.222-40, if necessary, to reflect an exemption granted by the Secretary (see 22.1602-1(d)).

22.1603 Postaward.

(a) The Secretary may conduct compliance evaluations or investigate complaints of any contractor or subcontractor to determine if any of the requirements of the clause at 52.222-40, Notification of Employee Rights under the National Labor Relations Act, have been violated.

(b) Contracting departments and agencies must cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions.

(c) If the Secretary determines that there has been a violation, the Secretary may take such actions as set forth in 29 CFR 471.14.

(d) The Secretary may not terminate or suspend a contract or suspend or debar a contractor if the agency head has provided written objections, which must include a statement of reasons for the objection and a finding that the contractor's performance is essential to the agency's mission, and continues to object to the imposition of such sanctions and penalties. Procedures for enforcement by the Secretary are set out in 29 CFR 471.10 through 29 CFR 471.16.

Subpart 22.17 - Combating Trafficking in Persons.

22.1700 Scope.

This subpart prescribes policy for implementing 22 U.S.C. chapter 78 and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012.

22.1701 Applicability.

(a) This subpart applies to all acquisitions.

(b) The requirement at 22.1703-1(b) for a certification and compliance plan applies only to any portion of a contract or subcontract that—

(1) Is for supplies, other than commercially available off-the-shelf (COTS) items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds $700,000.

22.1702 Definitions.

As used in this subpart --

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

Coercion means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of 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.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced labor means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for—

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs—

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is—

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to—

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means—

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

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

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

22.1703 Presolicitation.

22.1703-1 Requirements.

(a) The United States Government has adopted a policy prohibiting trafficking in persons, including certain trafficking-related activities. Additional information about trafficking in persons may be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/ . Government solicitations and contracts must—

(1) Prohibit contractors, contractor employees, subcontractors, subcontractor employees, and their agents from the trafficking-related activities listed in paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons.

(2) Require contractors and subcontractors to notify employees of the prohibited activities referenced in paragraph (a)(1) of this subsection and the actions that may be taken against them for violations.

(3) Require the contractor and subcontractors to—

(i) Disclose to the contracting officer and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to their facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. chapter 78), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(4) Provide suitable remedies, including termination, to be imposed on contractors that fail to comply with the requirements of paragraphs (a)(1) through (3) and (b) of this subsection.

(b) With regard to certification and a compliance plan, Government solicitations and contracts must—

(1) (i) Require the apparent successful offeror to provide, before contract award, a certification (see 52.222-56) that the offeror has a compliance plan if any portion of the contract or subcontract—

(A) Is for supplies, other than COTS items (see 2.101), to be acquired outside the United States, or services to be performed outside the United States; and

(B) The estimated value exceeds $700,000.

(ii) The certification must state that—

(A) The offeror has implemented the plan and has implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor or agent engaging in prohibited activities; and

(B) After having conducted due diligence, either—

(*1*) To the best of the offeror's knowledge and belief, neither it nor any of its agents, proposed subcontractors, or their agents, has engaged in any such activities; or

(*2*) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the offeror or proposed subcontractor has taken the appropriate remedial and referral actions;

(2) Require annual certifications (see 52.222-50(h)(5)) during performance of the contract, when a compliance plan was required at award;

(3) (i) Require the contractor to obtain a certification from each subcontractor, prior to award of a subcontract, if any portion of the subcontract—

(A) Is for supplies, other than COTS items (see 2.101), to be acquired outside the United States, or services to be performed outside the United States; and

(B) The estimated value exceeds $700,000.

(ii) The certification must state that—

(A) The subcontractor has implemented a compliance plan; and

(B) After having conducted due diligence, either—

(*1*) To the best of the subcontractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents, has engaged in any such activities; or

(*2*) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the subcontractor has taken the appropriate remedial and referral actions;

(4) Require the contractor to obtain annual certifications from subcontractors during performance of the contract, when a compliance plan was required at the time of subcontract award; and

(5) Require that any compliance plan or procedures must be appropriate to the size and complexity of the contract and the nature and scope of its activities,

including the number of non-U.S. citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons. The minimum elements of the plan are specified at 52.222-50(h).

22.1703-2 Solicitation provisions and contract clauses.

(a) (1) Insert the clause at 52.222-50, Combating Trafficking in Persons, in all solicitations and contracts.

(2) Use the clause with its Alternate I when the contract will be performed outside the United States and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of "off-limits" local establishments) that apply to contractor employees at the contract place of performance.

(b) Insert the provision at 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations if—

(1) It is possible that at least $700,000 of the value of the contract may be performed outside the United States; and

(2) The acquisition is not entirely for commercially available off-the-shelf items.

22.1704 Postaward.

(a) *Violations*. It is a violation of the Trafficking Victims Protection Act of 2000, as amended, (22 U.S.C. chapter 78), E.O. 13627, or the policies of this subpart if the contractor, contractor employee, subcontractor, subcontractor employee, or agent fails to comply with the requirements of the clause at 52.222-50, Combating Trafficking in Persons.

(b) *Credible information*. Upon receipt of credible information regarding a violation listed in paragraph (a) of this section, the contracting officer must promptly notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement officials with jurisdiction over the alleged offense; and may direct the contractor to take specific steps to abate the alleged violation or enforce the requirements of its compliance plan.

(c) *Receipt of agency Inspector General report*.

(1) The head of an executive agency must ensure that the contracting officer is provided a copy of the agency Inspector General report of an investigation of a violation of the trafficking in persons prohibitions in 52.222-50(b).

(2) (i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the executive agency must—

(A) Refer the matter to the agency suspending and debarring official; and

(B) In accordance with agency procedures, delegate to an authorized agency official, who may also be the agency suspending or debarring official, the responsibility to—

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

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

(*3*) Notify the contracting officer of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding described in paragraph (c)(2)(i)(B) of this section is the suspending and debarring official, the suspending and debarring 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 subpart 9.4 to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the factors in paragraph (d)(2) of this section.

(d) *Remedies*. After a final determination in accordance with paragraph (c)(2)(ii) of this section that the allegations of a trafficking in persons violation are substantiated, the contracting officer must—

(1) Enter the violation in FAPIIS (see part 42); and

(2) Consider taking any of the remedies specified in paragraph (e) of the clause at 52.222-50, Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the United States Government.

Subpart 22.18 - Employment Eligibility Verification

22.1801 Definitions.

As used in this subpart—

Commercially available off-the-shelf (COTS) item —

(1) Means any item of supply that is—

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1802-2. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It

includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands, as defined in 8 U.S.C. 1101(a)(38).

22.1802 Presolicitation.

22.1802-1 Policy.

(a) This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service's employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

(b) Statutes and Executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States, but is not a substitute for any other employment eligibility verification requirements.

(c) Contracting officers must include in solicitations and contracts, as prescribed in 22.1802-2, requirements that Federal contractors must—

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the United States, except that the contractor may choose to verify only new hires assigned to the contract if the contractor is—

(i) An institution of higher education (as defined at 20 U.S.C. 1001(a));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at 52.222-54, in subcontracts for—

(i) Services, except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) Construction.

(d) Contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of—

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12.

(e) In exceptional cases, the head of the contracting activity may waive the E-Verify requirement for a contract or subcontract or a class of contracts or subcontracts, either temporarily or for the period of performance. This waiver authority may not be delegated.

(f) DHS and the Social Security Administration (SSA) may terminate a contractor's memorandum of understanding (MOU) and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency must refer the contractor to a suspending and debarring official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspending and debarring official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222-54. If the contractor is suspended, debarred, or subject to a voluntary exclusion as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension, debarment, or voluntary exclusion. If the contractor is not

suspended, debarred, or subject to a voluntary exclusion, then the contractor must reenroll in E-Verify.

22.1802-2 Contract clause.

Insert the clause at 52.222-54, Employment Eligibility Verification, in all solicitations and contracts that exceed $150,000, except those that—

(a) Are only for work that will be performed outside the United States;

(b) Are for a period of performance of less than 120 days; or

(c) Are only for—

(1) Commercially available off-the-shelf items;

(2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of definition of "commercial product" at 2.101;

(3) Items that would be COTS items if they were not bulk cargo; or

(4) Commercial services that are—

(i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);

(ii) Performed by the COTS provider; and

(iii) Are normally provided for that COTS item.

Subpart 22.19 - Increasing the Minimum Wage for Contractors.

22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, which requires minimum wages for certain workers; Department of Labor (DOL) implementing regulations are found at 29 CFR part 23. This E.O. superseded E.O. 13658; DOL implementing regulations for E.O. 13658 are found at 29 CFR part 10.

22.1901 Definitions.

As used in this subpart—

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker (in accordance with 29 CFR 23.20)—

(1) (i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2) (i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

22.1902 Policy.

(a) Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts and subcontracts subject to this subpart is—

(1) At least $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The Administrator of the Wage and Hour Division (the Administrator) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See 22.1904.)

(b) *Relationship with other wage rates*.

(1) Nothing in this subpart shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(2) The E.O. minimum wage rate applies whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(c) *Application to tipped workers*. Policies and procedures in DOL regulations at 29 CFR 23.240(b) and 23.280 address the relationship between the E.O. minimum wage and wages of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

22.1903 Applicability.

(a) This subpart applies to contracts covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4), that require performance in whole or in part within the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*)). When performance is in

part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States.

(b) (1) This subpart applies to workers as defined at 22.1901. As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This subpart does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.,* those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(c) Agency Labor Advisors, as defined at 22.001, are listed at *https://www.sam.gov* and are available to provide guidance and assistance with the application of this subpart.

22.1904 Annual Executive Order Minimum Wage Rate.

(a) For the E.O. minimum wage rate that becomes effective on January 30, 2022, and annually thereafter, the Administrator will—

(1) Notify the public of the new E.O. minimum wage rate at least 90 days before it becomes effective by publishing a notice in the Federal Register;

(2) Publish and maintain on Wage Determinations at *SAM.gov, https://www.sam.gov* or any successor site, the E.O. minimum wage rate; and

(3) Include a general notice on wage determinations which are issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The notice will provide information on the E.O. minimum wage and how to obtain annual updates.

(b) (1) The contractor may request a price adjustment only after the effective date of a new annual E.O. minimum wage determination published pursuant to paragraph (a). Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs must include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(2) The wage rate price adjustment under this clause is the lowest amount calculated by subtracting from the new E.O. wage rate the following: The current E.O. minimum wage rate; the current service or construction wage determination rate under the contract (if the wage rate is applicable to that worker); or the actual wage currently paid the worker. If the amount is zero or below, there will be no increase paid for this worker.

(i) Example 1—New E.O. wage rate is $16.10.

Previous E.O. wage rate is $15.70.

The current service or construction wage determination rate applicable to this worker under the contract is $15.75.

Analysis: The calculation is $16.10–$15.80 = $.30. The price adjustment for this worker is $.30.

The actual wage currently paid to the worker is $15.80.

(ii) Example 2—New E.O. wage rate is $15.50.

Previous E.O. wage rate is $15.10.

The current service or construction wage determination rate applicable to this worker under the contract is $15.75.

Analysis: The calculation is $15.50–$15.80 = –$.30. There is no price adjustment for this worker.

The actual wage currently paid to the worker is $15.80.

(3) The contracting officer must not adjust the contract price for any costs other than those identified in paragraph (b)(1) of this section, and must not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

22.1905 Enforcement of Executive Order Minimum Wage Requirements.

(a) *Authority.*

(1) Section 5 of the E.O. grants the authority for investigating potential violations of, and obtaining compliance with, the E.O. to the Secretary of Labor. The Secretary of Labor, in promulgating the implementing regulations required by

Section 4 of the E.O., has assigned this authority to the Administrator. Contracting agencies do not have authority to conduct compliance investigations under 29 CFR part 10 or part 23 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.

(2) Contracting officers must withhold payment at the direction of the Administrator.

(3) The contracting officer must withhold payment, without a request from the Administrator, if the contractor fails to comply with the requirements in paragraph (e)(2) of 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 to furnish payroll records, until such time as the noncompliance is corrected.

(b) *Complaints*.

(1) Complaints may be filed with the contracting officer or the Administrator by any person, entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, must not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) Upon receipt of a complaint, or if notified that the Administrator has received a complaint, the contracting officer must report the following information, within 14 days, if available without conducting an investigation, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue NW., Room S3006, Washington, DC 20210.

(i) The complaint or description of the alleged violation;

(ii) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(iii) Evidence that clause 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, (or its predecessor for complaints under 29 CFR part 10) was included in the contract;

(iv) Information concerning known settlement negotiations between the parties, if applicable; and

(v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) *Investigations*. Complaints will be investigated by the Administrator, if warranted, in accordance with the procedures in 29 CFR part 23.430.

(d) *Remedies and sanctions* —

(1) *Unpaid wages*. When the Administrator's investigation reveals that a contractor has failed to pay the applicable E.O. minimum wage, the Administrator will notify the contractor and the contracting agency of the unpaid wage violation, and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator may direct withholding of payments due on the contract or any other contract between the contractor and the Federal Government. Upon final decision and direction of the Administrator, the contracting agency must transfer the withheld funds to the Department of Labor for disbursement in accordance with the procedures at 22.404-2.

(2) *Antiretaliation*. When a contractor has been found to have violated paragraph (i) of clause 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, the Administrator may provide for relief to the worker in accordance with 29 CFR 23.440.

(3) *Debarment*.

(i) The Department of Labor may initiate debarment proceedings under 29 CFR 23.520 whenever a contractor is found to have disregarded its obligations under 29 CFR part 23.

(ii) Contracting officers must consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart.

(4) *Retroactive inclusion of contract clause*. If a contracting agency fails to include the contract clause in a contract to which E.O. 14026 applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, must incorporate the

contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

22.1906 Contract clause.

Insert the clause at 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States.

Subpart 22.20 - [Reserved]

Subpart 22.21 - Establishing Paid Sick Leave for Federal Contractors.

22.2101 Definitions.

As used in this subpart—

Accrual year means the 12-month period during which a contractor may limit an employee's accrual of paid sick leave to no less than 56 hours (see 29 CFR 13.5(b)(1)).

Certification issued by a health care provider has the meaning given in 29 CFR 13.2.

Employee—

(1) (i) Means any person engaged in performing work on or in connection with a contract covered by E.O. 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2) (i) An employee performs on a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs in connection with a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

Health care provider has the meaning given in 29 CFR 13.2.

Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

22.2102 Presolicitation.

22.2102-1 General.

(a) This subpart prescribes policies and procedures to implement E.O. 13706, Establishing Paid Sick Leave for Federal Contractors, dated September 7, 2015, and Department of Labor implementing regulations at 29 CFR part 13.

(b) This subpart applies to—

(1) Contracts that—

(i) Are covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C.

chapter 31, Subchapter IV, formerly known as the Davis-Bacon Act, 22.402-3); and

(ii) Require performance in whole or in part within the United States. When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States; and

(2) Employees performing on or in connection with such contracts whose wages are governed by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions.

(c) The following are excluded from coverage under this subpart:

(1) Employees performing in connection with contracts covered by the E.O. for less than 20 percent of their work hours in a given workweek. This exclusion is inapplicable to employees performing on contracts covered by the E.O., *i.e.,* those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek (see 29 CFR 13.4(e)).

(2) Until the earlier of the date the agreement terminates or January 1, 2020, employees whose covered work is governed by a collective bargaining agreement ratified before September 30, 2016, that—

(i) Already provides 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year; or

(ii) Provides less than 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year, provided that each year the contractor provides covered employees with the difference between 56 hours (or 7 days) and the amount provided under the existing agreement in accordance with 29 CFR 13.4(f).

(3) The Government's unilateral exercise of a pre-negotiated option to renew an existing contract that does not contain the clause at 52.222-62 will not

automatically trigger the application of that clause. (See definition of “new contract” at 29 CFR 13.2).

(d) Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13. For additional details regarding interaction with the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Family and Medical Leave Act, and State and local paid sick time laws, see 29 CFR 13.5(f)(2) through (4).

22.2102-2 Policy.

(a) The Government must require contractors to allow employees performing work on or in connection with a contract covered by E.O. 13706 to accrue and use paid sick leave in accordance with the E.O. and 29 CFR part 13.

(b) In accordance with 29 CFR 13.5(f)(5)(i), the paid sick leave requirements of E.O. 13706 and 29 CFR part 13 may be satisfied by a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise, where the voluntary paid time off policy meets or exceeds the requirements. For additional details regarding paid time off policies, see 29 CFR 13.5(f)(5)(ii) and (iii).

(c) Employees cannot waive, nor may contractors induce employees to waive, their rights under E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.7).

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) Unless otherwise provided in this subpart, compliance is the responsibility of the contractor, and enforcement is the responsibility of the Department of Labor.

22.2102-3 Requirements.

In accordance with 29 CFR 13.5, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, the following contractor requirements apply:

(a) *Accrual*.

(1) Contractors are required to permit an employee to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a contract covered by the E.O. (see 29 CFR 13.5(a)(1)).

(2) Contractors are required to inform each employee, in writing, of the amount of paid sick leave the employee has accrued but not used no less than once each pay period or each month, whichever interval is shorter, as well as upon a separation from employment and upon reinstatement of paid sick leave, pursuant to 29 CFR 13.5(b)(4) (see 29 CFR 13.5(a)(2)).

(3) Contractors may choose to provide employees with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time (see 29 CFR 13.5(a)(3)).

(b) *Maximum accrual, carryover, reinstatement, and payment for unused leave.*

(1) Contractors may limit the amount of paid sick leave employees are permitted to accrue to not less than 56 hours in each accrual year (see 29 CFR 13.5(b)(1)).

(2) Paid sick leave must carry over from one accrual year to the next. Paid sick leave carried over from the previous accrual year must not count toward any limit the contractor sets on annual accrual (see 29 CFR 13.5(b)(2)).

(3) Contractors may limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours (see 29 CFR 13.5(b)(3)).

(4) Contractors are required to reinstate paid sick leave for employees only when rehired by the same contractor within 12 months after a job separation (see 29 CFR 13.5(b)(4)).

(5) Nothing in E.O. 13706 or 29 CFR part 13 requires contractors to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. If a contractor nevertheless makes such a payment in an amount equal to or greater than the value of the pay and benefits the employee would have received pursuant to 29 CFR 13.5(c)(3) had the employee used the paid sick leave, the contractor is relieved of the obligation to reinstate an

employee's accrued paid sick leave upon rehiring the employee within 12 months of the separation pursuant to 29 CFR 13.5(b)(4) (see 29 CFR 13.5(b)(5)).

(c) *Use.* Contractors are required to permit an employee to use paid sick leave in accordance with 29 CFR 13.5(c).

(d) *Request for paid sick leave.* Contractors are required to permit an employee to use any or all of the employee's available paid sick leave upon the oral or written request of an employee that includes information sufficient to inform the contractor that the employee is seeking to be absent from work for a purpose described in 29 CFR 13.5(c) and, to the extent reasonably feasible, the anticipated duration of the leave (see 29 CFR 13.5(d)).

(e) *Certification or documentation for leave of 3 or more consecutive full workdays.* Contractors may require certification issued by a health care provider to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(i), (ii), or (iii), or documentation from an appropriate individual or organization to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(iv), only if the employee is absent for 3 or more consecutive full workdays (see 29 CFR 13.5(e)).

22.2102-4 Prohibited acts.

In accordance with 29 CFR 13.6, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, a contractor may not—

(a) Interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.6(a));

(b) Discharge or in any other manner discriminate against any employee for—

(1) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;

(2) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 or 29 CFR part 13;

(3) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 or 29 CFR part 13; or

(4) Informing any other person about his or her rights under E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.6(b)); or

(c) Fail to make and maintain or to make available to authorized representatives of the Wage and Hour Division records for inspection, copying, and transcription as required by 29 CFR 13.25, or otherwise fail to comply with the requirements of 29 CFR 13.25 (see 29 CFR 13.6(c)).

22.2102-5 Contract clause.

Insert the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

22.2103 Postaward.

(a) *Authority.* Section 4 of Executive Order (E.O.) 13706 grants to the Secretary the authority for investigating potential violations of, and obtaining compliance with, the E.O. The Secretary of Labor, in promulgating the implementing regulations required by section 3 of the E.O., has assigned this authority to the Administrator of the Wage and Hour Division. Contracting agencies do not have authority to conduct compliance investigations under 29 CFR part 13 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.

(b) *Complaints*.

(1) Complaints are filed with the Administrator of the Wage and Hour Division and may be brought by any person (including the employee), entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, must not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) If the contracting agency receives a complaint or is notified that the Administrator of the Wage and Hour Division has received a complaint, the contracting officer must report, within 14 days, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue NW.,

Room S3006, Washington, DC 20210, all of the following information that is available without conducting an investigation:

(i) The complaint or description of the alleged violation.

(ii) Available statements by the employee, contractor, or any other person regarding the alleged violation.

(iii) Evidence that clause 52.222-62, Paid Sick Leave Under Executive Order 13706, was included in the contract.

(iv) Information concerning known settlement negotiations between the parties, if applicable.

(v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) *Investigations*. Complaints will be investigated by the Administrator of the Wage and Hour Division, if warranted, in accordance with the procedures in 29 CFR 13.43.

(d) *Remedies and sanctions* —

(1) *Withholding or suspending payment*. The contracting officer must, upon his or her own action or upon written request of the Administrator of the Wage and Hour Division—

(i) (A) Withhold or cause to be withheld from the contractor under the contract covered by the E.O. or any other Federal contract with the same contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of E.O. 13706 or 29 CFR part 13; and

(B) In the event of any such violation, the contracting agency may, after authorization or by direction of the Administrator of the Wage and Hour Division and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased; or

(ii) Take action to cause suspension of any further payment, advance, or guarantee of funds to a contractor that has failed to make available for

inspection, copying, and transcription any of the records identified in 29 CFR 13.25.

(2) *Civil actions to recover greater underpayments than those withheld*.

(i) If the payments withheld under 29 CFR 13.11(c) are insufficient to reimburse all monetary relief due, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary of Labor, may bring an action against the contractor in any court of competent jurisdiction to recover the remaining amount.

(ii) The Department of Labor must, to the extent possible, pay any sums it recovers in this manner directly to the employees who suffered the violation(s) of 29 CFR 13.6(a) or (b).

(iii) Any sum not paid to an employee because of inability to do so within 3 years must be transferred into the Treasury of the United States as miscellaneous receipts.

(3) *Termination*. Contracting officers may consider the failure of a contractor to comply with the requirements of E.O. 13706 or 29 CFR part 13 as grounds for termination for default or cause.

(4) *Debarment*.

(i) The Department of Labor may initiate debarment proceedings under 29 CFR 13.44(d) and 29 CFR 13.52 whenever a contractor is found to have disregarded its obligations under E.O. 13706 or 29 CFR part 13.

(ii) Contracting officers must consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart (see subpart 9.4).

(5) *Remedies for interference*.

(i) When the Administrator of the Wage and Hour Division determines that a contractor has interfered with an employee's accrual or use of paid sick leave in violation of 29 CFR 13.6(a), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the interference and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division must direct the contractor to provide any appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include—

(A) Any pay and/or benefits denied or lost by reason of the violation;

(B) Other actual monetary losses sustained as a direct result of the violation; or

(C) Appropriate equitable or other relief.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(6) *Remedies for discrimination*.

(i) When the Administrator of the Wage and Hour Division determines that a contractor has discriminated against an employee in violation of 29 CFR 13.6(b), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division must direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include, but is not limited to—

(A) Employment;

(B) Reinstatement;

(C) Promotion; and

(D) Restoration of leave, or lost pay and/or benefits.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(7) *Recordkeeping*. When a contractor fails to make, maintain, or protect records; or produce records when requested by authorized representatives of the Administrator of the Wage and Hour Division, or otherwise comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the Administrator of the Wage and Hour Division will request that the contractor remedy the violation. If the contractor fails to produce required records upon request, the contracting officer must, upon his or her own action or upon direction of an authorized representative of the Department of Labor, take such action as may be necessary to cause suspension of any further payment, advance, or guarantee of funds on the contract until such time as the violations are discontinued.

(e) *Inclusion of contract clause*. If a contracting agency fails to include the clause at FAR 52.222-62 in a contract to which the E.O. applies, the contracting officer, on his or her own initiative or within 15 days of notification by an authorized representative of the Department of Labor, must incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or

amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

Subpart 22.22 - Addressing DEI Discrimination by Federal Contractors

22.2200 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors, (91 FR 16147, March 31, 2026).

22.2201 Definitions.

As used in this subpart—

Program participation means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

Racially discriminatory DEI activities means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (*e.g.*, vendor agreements), program participation, or allocation or deployment of an entity's resources.

22.2202 Policy.

Executive Order 14398 requires measures to prevent contractors from engaging in any racially discriminatory DEI activities.

22.2203 Contract clause.

Insert the clause at 52.222-90, Addressing DEI Discrimination by Federal Contractors, in solicitations and contracts, including those for commercial products and commercial services, except those that result in contracts for which the place of delivery or performance is outside the United States.

Part 52 - Solicitation Provisions and Contract Clauses

52.222 [Reserved]

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52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

52.222-19 Child Labor-Cooperation with Authorities and Remedies.

52.222-20 Contracts for Materials, Supplies, Articles, and Equipment.

52.222-21 [Reserved]

52.222-22 [Reserved]

52.222-23 [Reserved]

52.222-24 [Reserved]

52.222-25 [Reserved]

52.222-26 [Reserved]

52.222-27 [Reserved]

52.222-28 [Reserved]

52.222-29 [Reserved]

52.222-30 Construction Wage Rate Requirements-Price Adjustment (None or Separately Specified Method).

52.222-31 Construction Wage Rate Requirements-Price Adjustment (Percentage Method).

52.222-32 Construction Wage Rate Requirements-Price Adjustment (Actual Method).

52.222-33 Notice of Requirement for Project Labor Agreement.

52.222-34 Project Labor Agreement.

52.222-35 Equal Opportunity for Veterans.

52.222-36 Equal Opportunity for Workers with Disabilities.

52.222-37 Employment Reports on Veterans.

52.222-38 [Reserved]

52.222-39 [Reserved]

52.222-40 Notification of Employee Rights Under the National Labor Relations Act.

52.222-41 Service Contract Labor Standards.

52.222-42 Statement of Equivalent Rates for Federal Hires.

52.222-43 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts).

52.222-44 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment.

52.222-45 [Reserved]

52.222-46 [Reserved]

52.222-47 [Reserved]

52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification.

52.222-49 Service Contract Labor Standards-Place of Performance Unknown.

52.222-50 Combating Trafficking in Persons.

52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements.

52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements.

52.222-54 Employment Eligibility Verification.

52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026.

52.222-56 Certification Regarding Trafficking in Persons Compliance Plan.

52.222-57 [Reserved]

52.222-58 [Reserved]

52.222-59 [Reserved]

52.222-60 [Reserved]

52.222-61 [Reserved]

52.222-62 Paid Sick Leave Under Executive Order 13706.

52.222-90 Addressing DEI Discrimination by Federal Contractors.

52.222 [Reserved]

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.102-2(a), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (DEVIATION MAR 2026)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor must immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

52.222-2 Payment for Overtime Premiums.

As prescribed in 22.102-2(b), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (DEVIATION MAR 2026)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed * ___ or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above must include all estimated overtime for contract completion and must-

(1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

* Insert either "zero" or the dollar amount agreed to during negotiations.

(End of clause)

52.222-3 Convict Labor.

As prescribed in 22.201-2, insert the following clause:

CONVICT LABOR (DEVIATION MAR 2026)

(a) Except as provided in paragraph (b) of this clause, the Contractor must not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

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

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-

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

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

52.222-4 Contract Work Hours and Safety Standards -Overtime Compensation.

As prescribed in 22.301-2, insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARDS-OVERTIME COMPENSATION (DEVIATION MAR 2026)

(a) *Overtime requirements*. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.301-1) must require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages*. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(c) *Withholding for unpaid wages and liquidated damages*. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors must maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and must make them available to the Government until 3 years after contract completion. The records must contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors must allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also must allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts*. The Contractor must insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor must be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

52.222-5 Construction Wage Rate Requirements-Secondary Site of the Work.

As prescribed in 22.402-4(g), insert the following provision:

CONSTRUCTION WAGE RATE REQUIREMENTS-SECONDARY SITE OF THE WORK (DEVIATION MAR 2026)

(a) (1) The offeror must notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror must request a determination from the Contracting Officer.

(b) (1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror must request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

(End of provision)

52.222-6 Construction Wage Rate Requirements.

As prescribed in 22.402-4(a)(1), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS (DEVIATION MAR 2026)

(a) *Definition.*—"Site of the work"—

(1) Means—

(i) *The primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is-

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) 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 or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work must be effective from the first day on which work under the contract was performed at that site and must be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the

primary site of the work must be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics must be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) must be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contractor must complete and submit to the Contracting Officer the Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, if any class of laborers or mechanics that is not listed in the wage determination applicable to the contract is to be employed under the contract. Upon receipt of a complete SF 1444, the Contracting Officer will submit a report to the Administrator, Wage and Hour Division, for approving, modifying, disapproving, or rendering a final determination, of the additional classification and wage rate including any amount designated for fringe benefits.

(2) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraph (c) of this clause must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor must either pay the benefit as stated in the wage determination or must pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

52.222-7 Withholding of Funds.

As prescribed in 22.402-4(a)(2), insert the following clause:

WITHHOLDING OF FUNDS (DEVIATION MAR 2026)

The Contracting Officer must, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

52.222-8 Payrolls and Basic Records.

As prescribed in 22.402-4(a)(3), insert the following clause:

PAYROLLS AND BASIC RECORDS (DEVIATION MAR 2026)

(a) Payrolls and basic records relating thereto must be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records must contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor must submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses must not be included on weekly transmittals. Instead the payrolls must only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the

U.S. Department of Labor Wage and Hour Division website at https://www.dol.gov/agencies/whd/forms. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors must maintain the full social security number and current address of each covered worker, and must provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted must be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and must certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 must satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor must make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor must permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

52.222-9 Apprentices and Trainees.

As prescribed in 22.402-4(a)(4), insert the following clause:

APPRENTICES AND TRAINEES (DEVIATION MAR 2026)

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed-

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, must be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program must be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes must be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor,

Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site must not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees must be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees must be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS must be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity*. The utilization of apprentices, trainees, and journeymen under this clause must be in conformity with the equal employment opportunity requirements of Executive Order11246, as amended, and 29 CFR Part 30.

(End of clause)

52.222-10 Compliance with Copeland Act Requirements.

As prescribed in 22.402-4(a)(5), insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (DEVIATION MAR 2026)

The Contractor must comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

52.222-11 Subcontracts (Labor Standards).

As prescribed in 22.402-4(a)(6), insert the following clause:

SUBCONTRACTS (LABOR STANDARDS) (DEVIATION MAR 2026)

(a) *Definition*. "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation-

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor must insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled-

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards-Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination-Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Construction Wage Rate Requirements and Related Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor must be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the contract, the Contractor must deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor must deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor must insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

52.222-12 Contract Termination-Debarment.

As prescribed in 22.402-4(a)(7), insert the following clause:

CONTRACT TERMINATION-DEBARMENT (DEVIATION MAR 2026)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations.

As prescribed in 22.402-4(a)(8), insert the following clause:

COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (DEVIATION MAR 2026)

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

52.222-14 Disputes Concerning Labor Standards.

As prescribed in 22.402-4(a)(9), insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (DEVIATION MAR 2026)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes must be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222-15 Certification of Eligibility.

As prescribed in 22.402-4(a)(10), insert the following clause:

CERTIFICATION OF ELIGIBILITY (MAY 2014)

(a) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

52.222-16 Approval of Wage Rates.

As prescribed in 22.402-4(b), insert the following clause:

APPROVAL OF WAGE RATES (DEVIATION MAR 2026)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Construction Wage Rate Requirements minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

52.222-17 [Reserved]

52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

As prescribed in 22.1502-2(a)(1), insert the following provision:

CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2021)

(a) *Definition*.

Forced or indentured child labor means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

(b) *Listed end products*. The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(c) *Certification*. The Government will not make award to an offeror unless the offeror, by checking the appropriate block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

☐ (1) The offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

☐ (2) The offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or

manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

52.222-19 Child Labor-Cooperation with Authorities and Remedies.

As prescribed in 22.1502-2(a)(2), insert the following clause:

CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (DEVIATION MAR 2026)

(a) *Applicability*. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in-

(1) Israel, and the anticipated value of the acquisition is $50,000 or more;

(2) Mexico, and the anticipated value of the acquisition is $105,767 or more; or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is $174,000 or more.

(b) *Cooperation with Authorities*. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations*. The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) Remedies.

(1) The Contracting Officer may terminate the contract.

(2) The suspending and debarring official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.

(3) The suspending and debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

(End of clause)

52.222-20 Contracts for Materials, Supplies, Articles, and Equipment.

As prescribed in 22.601-5, insert the following clause in solicitations and contracts:

CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT (DEVIATION MAR 2026)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed the threshold specified in Federal Acquisition Regulation 22.601-1 on the date of award of this contract, and is subject to 41 U.S.C. chapter 65, the following terms and conditions apply:

(a) All stipulations required by 41 U.S.C. chapter 65 and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract must be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and workers with disabilities may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under section 14 of the Fair Labor Standards Act (41 U.S.C. 6508).

(End of clause)

52.222-21 [Reserved]

52.222-22 [Reserved]

52.222-23 [Reserved]

52.222-24 [Reserved]

52.222-25 [Reserved]

52.222-26 [Reserved]

52.222-27 [Reserved]

52.222-28 [Reserved]

52.222-29 [Reserved]

52.222-30 Construction Wage Rate Requirements-Price Adjustment (None or Separately Specified Method).

As prescribed in 22.402-4(d), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS-PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (AUG 2018)

(a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour *Division, U.S.* Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of-

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Construction Wage Rate Requirements statute.

(End of clause)

52.222-31 Construction Wage Rate Requirements-Price Adjustment (Percentage Method).

As prescribed in 22.402-4(e), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS-PRICE ADJUSTMENT (PERCENTAGE METHOD) (AUG 2018)

(a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour *Division, U.S.* Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Construction Wage Rate Requirements statute to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Construction

Wage Rate Requirements statute is _____ *[Contracting Officer insert percentage rate]* percent.

(2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Construction Wage Rate Requirements statute by the percentage rate published in _____ *[Contracting Officer insert publication]*.

(c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of-

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Construction Wage Rate Requirements statute.

(End of clause)

52.222-32 Construction Wage Rate Requirements-Price Adjustment (Actual Method).

As prescribed in 22.402-4(f), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS-PRICE ADJUSTMENT (ACTUAL METHOD) (DEVIATION MAR 2026)

(a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour *Division, U.S*. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) (1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for contract price adjustment submitted under this clause.

(2) The Contractor must provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not

include any allowance for any increased cost for which adjustment is being requested.

(c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—

(1) Incorporation of the Department of Labor's Construction Wage Rate Requirements wage determination applicable at the exercise of an option to extend the term of the contract; or

(2) Incorporation of a Construction Wage Rate Requirements wage determination otherwise applied to the contract by operation of law.

(d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor must notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor must notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the period permitted by law. The notice must contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor must continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) Contract price adjustment computations must be computed as follows:

(1) *Computation for contract unit price per single craft hour for schedule of indefinite-quantity work*. For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination must be added to the original contract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the contract unit price must be

decreased by that amount if the Contractor provides notification as provided in paragraph (e) of this clause.

(2) *Computation for contract unit price containing multiple craft hours for schedule of indefinite-quantity work*. For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination must be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding contract period. The total of these computations for each craft will be added to the current contract unit price to obtain the new contract unit price. The extended amount for the line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding contract period for computation of the adjustment for a specific contract unit of work, the Contractor, in agreement with the Contracting Officer, must estimate the total hours per craft per contract unit of work.

Example: Asphalt Paving-Current Price $3.38 per Square Yard

DBA Craft	**New WD**		**Hourly rate paid**		**Diff.**		**Actual Hrs**	**Actual units (sq.yard)**		**Increase/ sqyard**
Equip. Opr.	$18.50	–	$18.00	=	$.50	x	600 hrs./	3,000 sq. yrd.	=	$.10
Truck Driver	$19.00	–	$18.25	=	$.75	x	525 hrs./	3,000 sq. yrd.	=	$.13

Example: Asphalt Paving-Current Price $3.38 per Square Yard

DBA Craft	New WD		Hourly rate paid		Diff.		Actual Hrs	Actual units (sq.yard)		Increase/ sqyard
Laborer	$11.50	–	$11.25	=	$.25	x	750 hrs./	3,000 sq. yrd.	=	$.06
								Total increase per square yard =		$.29*

* Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers' compensation insurance.

Current unit price (per square yard)		$3.38
Add DBA price adj.		+.29
New unit price (per square yard)	=	$3.67

(End of clause)

52.222-33 Notice of Requirement for Project Labor Agreement.

As prescribed in 22.502-3(a)(1), insert the following provision:

NOTICE OF REQUIREMENT FOR PROJECT LABOR AGREEMENT (DEVIATION MAR 2026)

(a) *Definitions*. As used in this provision, the following terms are defined in clause 52.222-34, Project Labor Agreement, of this solicitation "construction," "labor organization," "large-scale construction project," and "project labor agreement."

(b) Offerors must—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the resulting construction contract; and

(2) Require its subcontractors to become a party to the resulting project labor agreement.

(c) The project labor agreement reached pursuant to this provision must-

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

(2) Allow the Offeror and all 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 similar 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; and

(6) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of the resulting contract or provide for any price adjustment by the Government.

(e) The Offeror must submit to the Contracting Officer a copy of the project labor agreement with its offer.

(End of Provision)

Alternate I (DEVIATION MAR 2026). As prescribed in 22.502-3(a)(2), substitute the following paragraphs (b) and (e) for paragraphs (b) and (e) of the basic provision.

(b) The apparent successful offeror must—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the resulting construction contract; and

(2) Require its subcontractors to become a party to the resulting project labor agreement.

(e) The apparent successful offeror must submit to the Contracting Officer a copy of the project labor agreement prior to contract award.

Alternate II (DEVIATION MAR 2026). As prescribed in 22.502-3(a)(3), substitute the following paragraph (b) in lieu of paragraphs (b) through (e) of the basic provision:

(b) If awarded the contract, the Offeror must—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the resulting construction contract; and

(2) Require its subcontractors to become a party to the resulting project labor agreement.

Alternate III (DEVIATION MAR 2026). As prescribed in 22.502-3(a)(4), substitute the following paragraph (b) in lieu of paragraphs (b) through (e) of the basic provision:

(b)(1) If awarded the contract, the Offeror may be required by the agency to negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the order. The Contracting Officer will require that an executed copy of the project labor agreement be submitted to the agency—

(i) With the order offer;

(ii) Prior to award of the order; or

(iii) After award of the order.

(2) The Offeror must require its subcontractors to become a party to the resulting project labor agreement for the term of the order.

52.222-34 Project Labor Agreement.

As prescribed in 22.502-3(b)(1), insert the following clause:

PROJECT LABOR AGREEMENT (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause-

Construction means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members.

Large-scale construction project means a Federal construction project within the United States for which the total estimated cost of the construction contract(s) to the Federal Government is $35 million or more.

Project labor agreement means 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 described in 29 U.S.C. 158(f).

(b) The Contractor must maintain in a current status throughout the life of the contract the project labor agreement entered into prior to the award of the contract.

(c) *Subcontracts*. The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts with subcontractors engaged in construction on the construction project.

(End of clause)

Alternate I (DEVIATION MAR 2026) . As prescribed in 22.502-3(b)(2), substitute the following paragraphs (b) through (f) for paragraphs (b) and (c) of the basic clause:

(b) The Contractor must—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of this construction contract; and

(2) Submit an executed copy of the project labor agreement to the Contracting Officer as required in the solicitation.

(c) The project labor agreement reached pursuant to this clause must-

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

(2) Allow the Contractor and all 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 similar 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; and

(6) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this clause does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Contractor must maintain in a current status throughout the life of the contract the project labor agreement entered into pursuant to this clause.

(f) *Subcontracts*. The Contractor must require subcontractors engaged in construction on the construction project to agree to any project labor agreement negotiated by the prime contractor pursuant to this clause, and must include the substance of paragraphs (d) through (f) of this clause in subcontracts with subcontractors engaged in construction on the construction project.

Alternate II (DEVIATION MAR 2026). As prescribed in 22.502-3(b)(3), substitute the following paragraphs (b) through (f) for paragraphs (b) through (f) of the basic clause:

(b) When notified by the agency (*e.g.*, by the notice of intent to place an order under 16.505(b)(1)) that this order will use a project labor agreement, the Contractor must negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the order. The Contracting Officer must require that an executed copy of the project labor agreement be submitted to the agency—

(1) With the order offer;

(2) Prior to award of the order; or

(3) After award of the order.

(c) The project labor agreement reached pursuant to this clause must—

(1) Bind the Contractor 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 similar 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; and

(6) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this clause does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Contractor must maintain in a current status throughout the life of the order any project labor agreement entered into pursuant to this clause.

(f) *Subcontracts*. For each order that uses a project labor agreement, the Contractor must—

(1) Require subcontractors engaged in construction on the construction project to agree to any project labor agreement negotiated by the prime contractor pursuant to this clause; and

(2) Include the substance of paragraphs (d) through (f) of this clause in subcontracts with subcontractors engaged in construction on the construction project.

52.222-35 Equal Opportunity for Veterans.

As prescribed in 22.1302-2(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR VETERANS (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause-

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity requirements. The Contractor must abide by the requirements of 38 U.S.C. 4212(a)(1) and (2). These requirements prohibit discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor must insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1302-1(a)(2) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor must act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

Alternate I (JUL 2014). As prescribed in 22.1302-2(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ *[List term(s)]*.

52.222-36 Equal Opportunity for Workers with Disabilities.

As prescribed in 22.1401-2(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (DEVIATION MAR 2026)

(a) Equal opportunity clause. The Contractor must abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor must include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1401-2(a)(1) on the date of subcontract award, unless exempted by

rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor must act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

Alternate I (JULY 2014). As prescribed in 22.1401-2(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ *[List term(s)]*.

52.222-37 Employment Reports on Veterans.

As prescribed in 22.1302-2(b), insert the following clause:

EMPLOYMENT REPORTS ON VETERANS (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in Federal Acquisition Regulation (FAR) 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor must report at least annually, as required by the Secretary of Labor, on-

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor during the period covered by the report.

(c) The Contractor must report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at http://www.dol.gov/vets/vets4212.htm).

(d) The Contractor must file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause must reflect total new hires, and maximum and minimum number of employees, during the most recent 12–month period preceding the ending date selected for the report.

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor must insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1302-1(b) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

52.222-38 [Reserved]

52.222-39 [Reserved]

52.222-40 Notification of Employee Rights Under the National Labor Relations Act.

As prescribed in 22.1602-2(a), insert the following clause:

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEVIATION MAR 2026)

(a) During the term of this contract, the Contractor must post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are

customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR471.2 (d) and (f).

(1) Physical posting of the employee notice must be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor must also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be-

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor–Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor–Management Standards Web site at http://www.dol.gov/olms/regs/compliance/EO13496.htm; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor must comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended

in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor must include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor must not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor must take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

52.222-41 Service Contract Labor Standards.

As prescribed in 22.1002-2(b)(1), insert the following clause:

SERVICE CONTRACT LABOR STANDARDS (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause—

Contractor, when this clause is used in any subcontract, must be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

Service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as

revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability*. This contract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor must be paid not less than the minimum monetary wages and must be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor must classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.,* the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.,* appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees must be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure must be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor must submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer must review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour *Division, U.S*. Department of Labor. The Wage and Hour

Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division must be transmitted to the Contracting Officer who must promptly notify the Contractor of the action taken. Each affected employee must be furnished by the Contractor with a written copy of such determination or it must be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.,* adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the

corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor must advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract must in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause must be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division must make a final determination of conformed classification, wage rate, and/or fringe benefits which must be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation*. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract must be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits*. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage*. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts*. If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1 b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination must be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law

Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination must be effective as of the date of the final administrative decision.

(g) *Notification to employees*. The Contractor and any subcontractor under this contract must notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or must post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) must be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of 41 U.S.C. 6703 and of this contract.

(h) *Safe and sanitary working conditions*. The Contractor or subcontractor must not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor must comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records*.

(1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute must make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour *Division, a* record of the following:

(i) For each employee subject to the Service Contract Labor Standards statute-

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor must also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, must take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor must permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods*. The Contractor must unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments must be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract*. The Contracting Officer must withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate

official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts*. The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) *Collective bargaining agreements applicable to service employees*. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor must report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report must be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements must be reported promptly after negotiation thereof.

(n) *Seniority list*. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor must furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list must also contain anniversary dates of employment on the

contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer must turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations*. Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Representation*.

(1) By entering into this contract, the Contractor (and officials thereof) represents that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under 41 U.S.C. 6706.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under 41 U.S.C. 6706.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment*. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to 41 U.S.C. 6707 prior to its amendment by Pub.L.92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by 41 U.S.C. 6703(1) without diminishing any fringe benefits or cash payments in lieu thereof required under 41 U.S.C. 6703(2), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or

subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship and Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program must be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices must not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification must not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips*. An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by 41 U.S.C. 6703(1), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit must not exceed $1.34 per hour beginning January 1,1981. To use this provision-

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of 41 U.S.C. 6707(c).

(t) *Disputes concerning labor standards*. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes must be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222-42 Statement of Equivalent Rates for Federal Hires.

As prescribed in 22.1002-2(c)(1), insert the following clause:

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C.5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

Employee Class	Monetary Wage-Fringe Benefits
_____	_____
_____	_____

Employee Class	Monetary Wage-Fringe Benefits
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(End of clause)

52.222-43 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts).

As prescribed in 22.1002-2(d)(1), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (DEVIATION MAR 2026)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Labor Standards statute, (41 U.S.C. chapter 67), by the Administrator, Wage and Hour *Division, U.S.* Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, must apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of1938, as amended, (29

U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, must apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The Contractor chose to pay $4.10. The new wage determination increases the minimum rate to $4.50 per hour. Even if the Contractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but must not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor must notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor must promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice must contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly

rates must be modified in writing. The Contractor must continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative must have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

52.222-44 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment.

As prescribed in 22.1002-2(d)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS-PRICE ADJUSTMENT (DEVIATION MAR 2026)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with-

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it must not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor must notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor must promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice must contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates must be modified in writing. The Contractor must continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative must, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

52.222-45 [Reserved]

52.222-46 [Reserved]

52.222-47 [Reserved]

52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification.

As prescribed in 22.1002-2(e)(1), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT-CERTIFICATION (DEVIATION MAR 2026)

(a) The offeror must check the following certification:

Certification

The offeror ☐ does ☐ does not certify that-

(1) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontractor) in substantial quantities to the general public in the course of normal business operations;

(2) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(i) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(ii) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror; and

(3) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract are the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR 22.1002-1(e)(3) that the Service Contract Labor Standards statute-

(1) Will not apply to this offeror, then the Service Contract Labor Standards clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements, in this solicitation will not be included in any resultant contract awarded to this offeror, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision-

(1) The clause in this solicitation at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements, will not be included in any resultant contract awarded to this offeror; and

(2) The offeror must notify the Contracting Officer as soon as possible, if the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

52.222-49 Service Contract Labor Standards-Place of Performance Unknown.

As prescribed in 22.1002-2(f), insert the following clause:

SERVICE CONTRACT LABOR STANDARDS-PLACE OF PERFORMANCE UNKNOWN (DEVIATION MAR 2026)

(a) This contract is subject to the Service Contract Labor Standards statute, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: _____ *[insert places or areas]*. The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ *[insert time and date]*.

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination must be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

52.222-50 Combating Trafficking in Persons.

As prescribed in 22.1703-2(a)(1), insert the following clause:

COMBATING TRAFFICKING IN PERSONS (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause-

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

Coercion means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Commercially available off-the-shelf (COTS) item —

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) 2.101;

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of 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.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced Labor means knowingly providing or obtaining the labor or services of a person-

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means-

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

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

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents must not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that—

(ii) The requirements of paragraphs (b)(7)(i) of this clause must not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor must provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor must not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document must be in a language the employee understands. If the employee must relocate to perform the work, the work document must be provided to the employee at least five days prior to the employee relocating. The employee's work document must include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements*. The Contractor must-

(1) Notify its employees and agents of-

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification*.

(1) The Contractor must inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor must inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies*. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors*. When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors*. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors*. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation*.

(1) The Contractor must, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and must not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan*.

(1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $700,000.

(2) The Contractor must maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements*. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information

about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee or potential employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting*.

(i) The Contractor must post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor must provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor must provide the compliance plan to the Contracting Officer upon request.

(5) *Certification*. Annually after receiving an award, the Contractor must submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts*.

(1) The Contractor must include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $700,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor must require submission prior to the award of the subcontract and annually thereafter. The certification must cover the items in paragraph (h)(5) of this clause.

(End of clause)

Alternate I (DEVIATION MAR 2026). As prescribed in 22.1703-2(a)(2), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

(c)(1)(i)(A) The United States Government's policy prohibiting trafficking in persons described in paragraph (b) of this clause; and

(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies to performance in/at:
_____	_____	_____
_____	_____	_____

[*Contracting Officer must insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the United States to which the document applies.*]

52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements.

As prescribed in 22.1002-2(e)(2), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT-REQUIREMENTS (DEVIATION MAR 2026)

(a) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations.

(b) The services must be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract must be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor must determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Contractor must consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The Contractor must include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

(End of clause)

52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

As prescribed in 22.1002-2(e)(3), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES-CERTIFICATION (DEVIATION MAR 2026)

(a) The offeror must check the following certification:

Certification

The offeror ☐ does ☐ does not certify that-

(1) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;

(3) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR 22.1002-1(f)(3) that the Service Contract Labor Standards statute-

(1) Will not apply to this offeror, then the Service Contract Labor Standards clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements, in this solicitation will not be included in any resultant contract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision-

(1) The clause of this solicitation at 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror must notify the Contracting Officer as soon as possible if the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements.

As prescribed in 22.1002-2(e)(4), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES-REQUIREMENTS (DEVIATION MAR 2026)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours

during the contract period if the contract period is less than a month) servicing the Government contract.

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(e) (1) Except for services identified in FAR 22.1002-1(f)(1)(iv), the subcontractor for exempt services must be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or

(2) A subcontract for exempt services must be awarded on a sole source basis.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor must determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor must consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Labor Standards statute must be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption must be deemed inapplicable, and the contract must become subject to the Service Contract Labor Standards statute. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor must include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End of clause)

52.222-54 Employment Eligibility Verification.

As prescribed in 22.1802-2, Insert the following clause:

EMPLOYMENT ELIGIBILITY VERIFICATION (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause-

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986 (after November 27, 2009 in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1802-2. An employee is not considered to be directly performing work under a contract if the employee-

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements*.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor must-

(i) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract*. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor must use E-Verify to initiate verification of employment eligibility of-

(i) *All new employees*.

(A) *Enrolled 90 calendar days or more*. The Contractor must initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days*. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor must initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the

contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract*. For each employee assigned to the contract, the Contractor must initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor must follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees*. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor must initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of-

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor must comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspending and debarring official.

(ii) During the period between termination of the MOU and a decision by the suspending and debarring official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the Contractor is not suspended, debarred, or subject to a voluntary exclusion, then the Contractor must reenroll in E-Verify.

(c) *Web site*. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: https://www.e-Verify.gov.

(d) *Individuals previously verified*. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts*. The Contractor must include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that-

(1) Is for—

(i) Services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

(End of clause)

52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026.

As prescribed in 22.1906, insert the following clause:

MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026
(DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause—

United States means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker—

(1) (i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and —

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2) (i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

(b) *Executive Order minimum wage rate*.

(1) The Contractor must pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of $15.00 per hour beginning January 30, 2022.

(2) The Contractor must adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on *https://www.sam.gov* (or any successor Web site), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3) (i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs must include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors must consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer must not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and must not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers must be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor must pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor must not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor must pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor must follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

(c) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) *Notice*. The Contractor must notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor must post notice, utilizing the poster provided by the Administrator, which can be obtained at *www.dol.gov/agencies/whd/government-contracts*, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) *Payroll Records*.

(1) The Contractor must make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor must make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor must also make such records available upon request of the Contracting Officer.

(3) The Contractor must make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment must be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) *Access*. The Contractor must permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) *Withholding*. The Contracting Officer, upon his or her own action or upon written request of the Administrator, must withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) *Disputes*. Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes must be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) *Antiretaliation*. The Contractor must not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) *Subcontractor compliance*. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) *Subcontracts*. The Contractor must include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

52.222-56 Certification Regarding Trafficking in Persons Compliance Plan.

As prescribed in 22.1703-2(b), insert the following provision:

CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (DEVIATION MAR 2026)

(a) The term "commercially available off-the-shelf (COTS) item," is defined in the clause of this solicitation entitled "Combating Trafficking in Persons" (FAR clause 52.222-50).

(b) The apparent successful Offeror must submit, prior to award, a certification, as specified in paragraph (c) of this provision, for the portion (if any) of the contract that-

(1) Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds $700,000.

(c) The certification must state that-

(1) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons, and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons; and

(2) After having conducted due diligence, either-

(i) To the best of the Offeror's knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities; or

(ii) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the Offeror or proposed subcontractor has taken the appropriate remedial and referral actions.

(End of provision)

52.222-57 [Reserved]

52.222-58 [Reserved]

52.222-59 [Reserved]

52.222-60 [Reserved]

52.222-61 [Reserved]

52.222-62 Paid Sick Leave Under Executive Order 13706.

As prescribed at 22.2102-5, insert the following clause:

PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (DEVIATION MAR 2026)

(a) *Definitions*. As used in this clause (in accordance with 29 CFR 13.2)-

Child, "domestic partner", and "domestic violence" have the meaning given in 29 CFR 13.2.

Employee –

(1) (i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions;

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2) (i) An employee performs "on" a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs "in connection with" a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship has the meaning given in 29 CFR 13.2.

Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR Part 13.

Parent, "sexual assault", "spouse", and "stalking" have the meaning given in 29 CFR 13.2.

United States means the 50 States and the District of Columbia.

(b) *Executive Order 13706*.

(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR Part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the United States, this clause only applies with respect to that part of the contract that is performed within the United States.

(c) *Paid sick leave*. The Contractor must-

(1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;

(2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR Part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract;

(4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR Part 13, and this clause.

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR Part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) *Withholding*. The Contracting Officer must, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR Part 13, or this clause, including-

(1) Any pay and/or benefits denied or lost by reason of the violation;

(2) Other actual monetary losses sustained as a direct result of the violation; and

(3) Liquidated damages.

(f) *Payment suspension/contract termination/contractor debarment*.

(1) In the event of a failure to comply with E.O. 13706, 29 CFR Part 13, or this clause, the contracting agency may, on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR Part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not

receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR Part 13.

(h) Nothing in E.O. 13706 or 29 CFR Part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR Part 13.

(i) *Recordkeeping*.

(1) The Contractor must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee, which the Contractor must make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

(i) Name, address, and social security number of each employee.

(ii) The employee's occupation(s) or classification(s).

(iii) The rate or rates of wages paid (including all pay and benefits provided).

(iv) The number of daily and weekly hours worked.

(v) Any deductions made.

(vi) The total wages paid (including all pay and benefits provided) each pay period.

(vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2).

(viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.

(ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR Part 13 as described in 29 CFR 13.5(f)(5), leave must be designated in records as paid sick leave pursuant to E.O. 13706).

(x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3).

(xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee.

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.

(xiii) The relevant contract.

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.

(xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2) (i) If the Contractor wishes to distinguish between an employee's covered and noncovered work, the Contractor must keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.

(ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR 13.5(a)(1)(i) or (iii), the Contractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates

the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor must permit the employee to use his or her paid sick leave during any work time for the Contractor.

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.

(4) (i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, must be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor must not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and must maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor must permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 14026, their respective implementing regulations, or any other applicable law.

(j) Interference/discrimination.

(1) The Contractor must not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR Part 13. Interference includes, but is not limited to-

(i) Miscalculating the amount of paid sick leave an employee has accrued;

(ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave;

(iii) Discouraging an employee from using paid sick leave;

(iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;

(v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave;

(vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave; or

(vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

(2) The Contractor must not discharge or in any other manner discriminate against any employee for–

(i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR Part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR Part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR Part 13; or

(iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR Part 13.

(k) *Notice*. The Contractor must notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR Part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the Contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(l) *Disputes concerning labor standards*. Disputes related to the application of E.O. 13706 to this contract must not be subject to the general disputes clause of the contract. Such disputes must be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the employees or their representatives.

(m) *Subcontracts*. The Contractor must insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

52.222-90 Addressing DEI Discrimination by Federal Contractors.

As prescribed in 22.2203, insert the following clause:

ADDRESSING DEI DISCRIMINATION BY FEDERAL CONTRACTORS (DEVIATION APR 2026)

(a) *Definitions*. As used in this clause—

Program participation means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

Racially discriminatory diversity, equity, and inclusion (DEI) activities means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (*e.g.*, vendor agreements), program participation, or allocation or deployment of an entity's resources.

(b) In connection with the performance of work under this contract, the Contractor agrees as follows:

(1) The Contractor will not engage in any racially discriminatory DEI activities;

(2) The Contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the Contracting Officer, for purposes of ascertaining compliance with this clause;

(3) In the event of the Contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor or subcontractor may be declared ineligible for further Government contracts;

(4) The Contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the Contracting Officer and take any appropriate remedial actions directed by the Contracting Officer; and

(5) The Contractor will inform the Contracting Officer if a subcontractor sues the Contractor and the suit puts at issue, in any way, the validity of this clause.

(6) The Contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of 31 U.S.C. 3729(b)(4).

(c) The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier, including those for commercial products and commercial services, except those where the place of delivery or performance is outside the United States.

(End of clause)