

FEDERAL ACQUISITION CIRCULAR

January 18, 2013

Number 2005-64
Effective January 18, 2013
Looseleaf pages

Federal Acquisition Circular (FAC) 2005-64 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-64 is effective January 18, 2013.

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FAC 2005-64 List of Subject

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Nondisplacement of Qualified Workers Under Service Contracts	iii

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FAC 2005-64 SUMMARY OF ITEM

Federal Acquisition Circular (FAC) 2005-64 amends the Federal Acquisition Regulation (FAR) as specified below:

Nondisplacement of Qualified Workers Under Service Contracts (FAR Case 2011-028)

This final rule adds subpart 22.12, entitled "Nondisplacement of Qualified Workers Under Service Contracts," and a related contract clause, to the FAR. The new subpart implements Executive Order 13495 and Department of Labor implementing regulations at 29 CFR part 9. The final rule applies to service contracts for performance by service employees of the same or similar work at the same location. It requires service contractors and their subcontractors under successor contracts to offer service employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

Replacement pages: 1.1-3 thru 1.1-8; 2.1-15 and 2.1-16; Part 22 TOC pp. 22-1 thru 22-4; 22.1-1 thru 22.1-4; 22.10-1 thru 22.10-6; 22.11-1 and 22.11-2; 22.12-1 thru 22.12-4; Part 52 TOC pp. 52-3 and 52-4; 52.2-39 and 52.2-42; 52.2-111 thru 52.2-114; and Matrix pp. 52.3-13 and 52.3-14.

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FAC 2005-64 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-3" is page 3 of subpart 1.1.

Remove Pages

1.1-3 thru 1.1-8

2.1-15 and 2.1-16

Part 22 TOC pp.

22-1 thru 22-4

22.1-1 thru 22.1-4

22.10-1 thru 22.10-6

22.11-1 and 22.11-2

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Part 52 TOC pp.

52-3 and 52-4

52.2-39 and 52.2-42

52.2-111 thru 52.2-114

Matrix pp.

52.3-13 and 52.3-14

Insert Pages

1.1-3 thru 1.1-8

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Part 22 TOC pp.

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22.1-1 thru 22.1-4

22.10-1 thru 22.10-6

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1.104 Applicability.

The FAR applies to all acquisitions as defined in [Part 2](#) of the FAR, except where expressly excluded.

1.105 Issuance.**1.105-1 Publication and code arrangement.**

(a) The FAR is published in—

(1) The daily issue of the *Federal Register*;

(2) Cumulated form in the *Code of Federal Regulations* (CFR); and

(3) A separate loose-leaf edition.

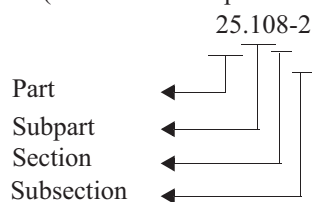
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (*e.g.*, part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence:

(a)(1)(i)(A)(I)(i)

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be “FAR part 9” outside the FAR and “part 9” within the FAR.

(ii) Subpart would be “FAR subpart 9.1” outside the FAR and “subpart 9.1” within the FAR.

(iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.

(iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.

(v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

1.105-3 Copies.

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

Superintendent of Documents
Government Printing Office (GPO)
Washington, DC 20402.

1.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.11	9000-0181
3.4	9000-0003
4.102	9000-0033
4.14	9000-0177
4.5	9000-0137
4.605	9000-0145
4.607	9000-0145
4.7	9000-0034
4.9	9000-0097
5.405	9000-0036
7.2	9000-0082
8.5	9000-0113
9.1	9000-0011
9.2	9000-0020
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0037
14.407	9000-0038

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1.106

FEDERAL ACQUISITION REGULATION

FAR segment	OMB Control Number	FAR segment	OMB Control Number
14.5	9000-0041	48	9000-0027
15.2	9000-0037	49	9000-0028
15.209	9000-0034	50	9000-0029
15.4	9000-0013	51.1	9000-0031
15.404-1(f)	9000-0080	51.2	9000-0032
15.407-2	9000-0078	52.203-2	9000-0018
15.408	9000-0115	52.203-7	9000-0091
19.7	9000-0006 and	52.203-16	9000-0181
	9000-0007	52.204-3	9000-0097
19.12	9000-0150	52.204-6	9000-0145
22.103	9000-0065	52.204-7	9000-0159
22.8	1215-0072	52.204-10	9000-0177
22.11	9000-0066	52.204-12	9000-0145
22.12	1235-0007 and	52.204-13	9000-0159
	1235-0025	52.207-3	9000-0114
22.13	1293-0005 and	52.208-8	9000-0113
	1215-0072	52.208-9	9000-0113
22.14	1215-0072	52.209-1(b)	9000-0020
22.16	1215-0209	52.209-1(c)	9000-0083
23.602	9000-0107	52.209-5	9000-0094
27.3	9000-0095	52.209-6	9000-0094
27.4	9000-0090	52.209-7	9000-0174
28.1	9000-0045	52.209-9	9000-0174
28.2	9000-0045	52.211-8	9000-0043
29.304	9000-0059	52.211-9	9000-0043
30.6	9000-0129	52.212-1(k)	9000-0159
31.205-46	9000-0079	52.212-3	9000-0136
31.205-46(a)(3)	9000-0088	52.212-4(t)	9000-0159
32	9000-0035	52.214-14	9000-0047
32.000	9000-0138	52.214-15	9000-0044
32.1	9000-0070 and	52.214-16	9000-0044
	9000-0138	52.214-21	9000-0039
32.2	9000-0138	52.214-26	9000-0034
32.4	9000-0073	52.214-28	9000-0013
32.5	9000-0010 and	52.215-2	9000-0034
	9000-0138	52.215-1(c)(2)(iv)	9000-0048
32.7	9000-0074	52.215-1(d)	9000-0044
32.9	9000-0102	52.215-6	9000-0047
32.10	9000-0138	52.215-9	9000-0078
33	9000-0035	52.215-12	9000-0013
34.1	9000-0133	52.215-13	9000-0013
36.213-2	9000-0037	52.215-14	9000-0080
36.603	9000-0157	52.215-19	9000-0115
41.202(c)	9000-0125	52.215-20	9000-0013
42.7	9000-0013	52.215-21	9000-0013
42.12	9000-0076	52.215-22	9000-0173
42.13	9000-0076	52.215-23	9000-0173
45	9000-0075	52.216-2	9000-0068
46	9000-0077	52.216-3	9000-0068
47	9000-0061	52.216-4	9000-0068
47.208	9000-0056	52.216-5	9000-0071

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<u>52.216-6</u>	9000-0071	<u>52.225-23</u>	9000-0141
<u>52.216-7</u>	9000-0069	<u>52.227-14</u>	9000-0090
<u>52.216-10</u>	9000-0067	<u>52.227-15</u>	9000-0090
<u>52.216-15</u>	9000-0069	<u>52.227-16</u>	9000-0090
<u>52.216-16</u>	9000-0067	<u>52.227-17</u>	9000-0090
<u>52.216-17</u>	9000-0067	<u>52.227-18</u>	9000-0090
<u>52.219-9</u>	9000-0006 and	<u>52.227-19</u>	9000-0090
	9000-0007	<u>52.227-20</u>	9000-0090
<u>52.219-10</u>	9000-0006	<u>52.227-21</u>	9000-0090
<u>52.219-22</u>	9000-0150	<u>52.227-22</u>	9000-0090
<u>52.219-23</u>	9000-0150	<u>52.227-23</u>	9000-0090
<u>52.219-25</u>	9000-0150	<u>52.228-1</u>	9000-0045
<u>52.219-28</u>	9000-0163	<u>52.228-2</u>	9000-0045
<u>52.219-29</u>	3245-0374	<u>52.228-12</u>	9000-0135
<u>52.219-30</u>	3245-0374	<u>52.228-13</u>	9000-0045
<u>52.222-2</u>	9000-0065	<u>52.228-15</u>	9000-0045
<u>52.222-4</u>	1215-0119	<u>52.228-16</u>	9000-0045
<u>52.222-6</u>	1215-0140	<u>52.229-2</u>	9000-0059
<u>52.222-8</u>	1215-0149 and	<u>52.230-6</u>	9000-0129
	1215-0017	<u>52.232-1</u>	9000-0070
<u>52.222-11</u>	9000-0014	<u>52.232-2</u>	9000-0070
<u>52.222-17</u>	1235-0007 and	<u>52.232-3</u>	9000-0070
	1235-0025	<u>52.232-4</u>	9000-0070
<u>52.222-18</u>	9000-0127	<u>52.232-5</u>	9000-0070
<u>52.222-21</u>	1215-0072	<u>52.232-6</u>	9000-0070
<u>52.222-22</u>	1215-0072	<u>52.232-7</u>	9000-0070
<u>52.222-23</u>	1215-0072	<u>52.232-8</u>	9000-0070
<u>52.222-25</u>	1215-0072	<u>52.232-9</u>	9000-0070
<u>52.222-26</u>	1215-0072	<u>52.232-10</u>	9000-0070
<u>52.222-27</u>	1215-0072	<u>52.232-11</u>	9000-0070
<u>52.222-32</u>	9000-0154	<u>52.232-12</u>	9000-0073
<u>52.222-35</u>	1215-0072	<u>52.232-13</u>	9000-0010
<u>52.222-36</u>	1215-0072	<u>52.232-14</u>	9000-0010
<u>52.222-37</u>	1293-0005	<u>52.232-15</u>	9000-0010
<u>52.222-40</u>	1215-0209	<u>52.232-16</u>	9000-0010
<u>52.222-41</u>	1215-0017 and	<u>52.232-20</u>	9000-0074
	1215-0150	<u>52.232-22</u>	9000-0074
<u>52.222-46</u>	9000-0066	<u>52.232-27</u>	9000-0102
<u>52.223-2</u>	9000-0180	<u>52.232-29</u>	9000-0138
<u>52.223-4</u>	9000-0134	<u>52.232-30</u>	9000-0138
<u>52.223-5</u>	9000-0147	<u>52.232-31</u>	9000-0138
<u>52.223-6(b)(5)</u>	9000-0101	<u>52.232-32</u>	9000-0138
<u>52.223-7</u>	9000-0107	<u>52.233-1</u>	9000-0035
<u>52.223-9</u>	9000-0134	<u>52.234-1</u>	9000-0133
<u>52.225-2</u>	9000-0024	<u>52.236-5</u>	9000-0062
<u>52.225-4</u>	9000-0130	<u>52.236-13</u>	1220-0029 and
<u>52.225-6</u>	9000-0025		9000-0060
<u>52.225-8</u>	9000-0022	<u>52.236-15</u>	9000-0058
<u>52.225-9</u>	9000-0141	<u>52.236-19</u>	9000-0064
<u>52.225-11</u>	9000-0141	<u>52.241-1</u>	9000-0126
<u>52.225-18</u>	9000-0161	<u>52.241-3</u>	9000-0122
<u>52.225-21</u>	9000-0141		

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.241-7	9000-0123	52.249-11	9000-0028
52.241-13	9000-0124	52.250-1	9000-0029
52.243-1	9000-0026	SF 24	9000-0045
52.243-2	9000-0026	SF 25	9000-0045
52.243-3	9000-0026	SF 25A	9000-0045
52.243-4	9000-0026	SF 28	9000-0001
52.243-6	9000-0026	SF 34	9000-0045
52.243-7	9000-0026	SF 35	9000-0045
52.245-1	9000-0075	SF 273	9000-0045
52.245-9	9000-0075	SF 274	9000-0045
52.246-2	9000-0077	SF 275	9000-0045
52.246-3	9000-0077	SF 330	9000-0157
52.246-4	9000-0077	SF 1403	9000-0011
52.246-5	9000-0077	SF 1404	9000-0011
52.246-6	9000-0077	SF 1405	9000-0011
52.246-7	9000-0077	SF 1406	9000-0011
52.246-8	9000-0077	SF 1407	9000-0011
52.246-10	9000-0077	SF 1408	9000-0011
52.246-12	9000-0077	SF 1413	9000-0014
52.246-15	9000-0077	SF 1416	9000-0045
52.247-2	9000-0053	SF 1418	9000-0045
52.247-29	9000-0061	SF 1428	9000-0075
52.247-30	9000-0061	SF 1429	9000-0075
52.247-31	9000-0061	SF 1435	9000-0012
52.247-32	9000-0061	SF 1436	9000-0012
52.247-33	9000-0061	SF 1437	9000-0012
52.247-34	9000-0061	SF 1438	9000-0012
52.247-35	9000-0061	SF 1439	9000-0012
52.247-36	9000-0061	SF 1440	9000-0012
52.247-37	9000-0061	SF 1443	9000-0010
52.247-38	9000-0061	SF 1444	9000-0089
52.247-39	9000-0061	SF 1445	9000-0089
52.247-40	9000-0061	SF 1446	9000-0089
52.247-41	9000-0061	OF 312	9000-0150
52.247-42	9000-0061		
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52.247-44	9000-0061		
52.247-48	9000-0061		
52.247-51	9000-0057		
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52.247-64	9000-0061		
52.247-68	9000-0056		
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52.248-2	9000-0027		
52.248-3	9000-0027		
52.249-2	9000-0028		
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52.249-5	9000-0028		
52.249-6	9000-0028		

1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act ([41 U.S.C. 425](#)), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in [Part 2](#) apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see [1.102-4\(b\)](#)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of

Federal Procurement Policy policy letter, or relevant portion of the *Code of Federal Regulations*, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.

(a) [41 U.S.C. 431a](#) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except as provided in paragraph (c) of this section. This adjustment is calculated every 5 years, starting in October 2005, using the Consumer Price Index (CPI) for all-urban consumers, and supersedes the applicability of any other provision of law that provides for the adjustment of such acquisition-related dollar thresholds.

(b) The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

(c) The statute does not permit escalation of acquisition-related dollar thresholds established by the Davis-Bacon Act ([40 U.S.C. 3141](#) through 3144, 3146, and 3147), the Service Contract Act of 1965 ([41 U.S.C. 351](#), *et seq.*), or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979 ([19 U.S.C. 2511](#), *et seq.*).

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available via the Internet at <http://www.regulations.gov> (search FAR Case 2008-024).

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because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

“Terminated portion of the contract” means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

“Unallowable cost” means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that—

(1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—

- (i) Is the product of original thinking submitted confidentially by one source;
- (ii) Contains new, novel, or changed concepts, approaches, or methods;
- (iii) Was not submitted previously by another; and
- (iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

- (1) For use in [Subpart 3.10](#), see the definition at [3.1001](#).
- (2) For use in [Subpart 22.8](#), see the definition at [22.801](#).
- (3) For use in [Subpart 22.10](#), see the definition at [22.1001](#).
- (4) For use in [Subpart 22.12](#), see the definition at [22.1201](#).
- (5) For use in [Subpart 22.13](#), see the definition at [22.1301](#).
- (6) For use in [Subpart 22.16](#), see the definition at [22.1601](#).
- (7) For use in [Subpart 22.18](#), see the definition at [22.1801](#).
- (8) For use in part [23](#), see definition at [23.001](#).
- (9) For use in [Part 25](#), see the definition at [25.003](#).
- (10) For use in [Part 27](#), see the definition at [27.001](#).
- (11) For use in [Subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement Policy Act, [41 U.S.C. 401](#), *et seq.*). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

- (1) Means a proposal that—
 - (i) Requires a change to the instant contract to implement; and
 - (ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—
 - (A) In deliverable end item quantities only;
 - (B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or
 - (C) To the contract type only.
- (2) For use in the clauses at—
 - (i) [52.248-2](#), see the definition at [52.248-2\(b\)](#); and
 - (ii) [52.248-3](#), see the definition at [52.248-3\(b\)](#).

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Virgin material” means—

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Voluntary consensus standards” means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (*e.g.*, International

Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

“Water consumption intensity” means water consumption per square foot of building space.

“Women-owned small business concern” means—

(1) A small business concern—

(i) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; or

(2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart [19.15](#)).

“Women-Owned Small Business (WOSB) Program.”

(1) “Women-Owned Small Business Program (WOSB Program)” means a program that authorizes contracting officers to limit competition to—

(i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

(ii) Eligible WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented.

(2) “Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

(3) “Women-owned small business (WOSB)” concern eligible under the WOSB Program means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States (13 CFR part 127).

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22.000 Scope of part.

This part—

- (a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;
- (b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes contract clauses with respect to each pertinent labor law.

22.001 Definitions.

“Administrator” or “Administrator, Wage and Hour Division,” as used in this part, means the—

Administrator
 Wage and Hour Division
 Employment Standards Administration
 U.S. Department of Labor
 Washington, DC 20210

or an authorized representative.

“e98” means the Department of Labor’s approved electronic application (<http://www.wdol.gov>), whereby a contracting officer submits pertinent information to the Department of Labor and requests a Service Contract Act wage determination directly from the Wage and Hour Division.

“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 the Service Contract Act (41 U.S.C. chapter 67; see [22.1003-3](#) and [22.1003-4](#)). See [22.1003-5](#) and 29 CFR 4.130 for a partial list of services covered by the Act.

“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 OnLine (WDOL)” means the Government Internet website for both Davis-Bacon Act and Service Contract Act wage determinations available at <http://www.wdol.gov>.

Subpart 22.1—Basic Labor Policies

22.101 Labor relations.

22.101-1 General.

(a) Agencies shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains

needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b)(1) Agencies shall 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.

(2) For use of project labor agreements, see subpart [22.5](#).

(c) Agencies should, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies should take other actions concerning labor relations problems to the extent consistent with their acquisition responsibilities. For example, agencies should—

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute’s potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) 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 (see [22.103-5\(a\)](#)).

22.101-2 Contract pricing and administration.

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see [31.205-6\(b\)](#).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting offic-

ers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors' or their subcontractors' control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

- (1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;
- (2) Using other available Government procedures; and
- (3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore may have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts. Certain costs may increase because of strikes; *e.g.*, guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (*e.g.*, "fixed costs" such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

22.101-3 Reporting labor disputes.

The office administering the contract shall 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.

22.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

- (1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.
- (2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

22.102 Federal and State labor requirements.

22.102-1 Policy.

Agencies shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

- (a) Safety;
- (b) Health and sanitation;
- (c) Maximum hours and minimum wages;
- (d) Equal employment opportunity;
- (e) Child and convict labor;
- (f) Age discrimination;
- (g) Disabled and Vietnam veteran employment;
- (h) Employment of the handicapped; and
- (i) Eligibility for employment under United States immigration laws.

22.102-2 Administration.

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the U.S. Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's Wage and Hour Division is responsible for administration and enforcement of numerous wage and hour statutes including Davis-Bacon and Related Acts, McNamara-O'Hara Service Contract Act, Walsh-Healey Public Contracts Act, Copeland Act, and Contract Work Hours and Safety Standards Act. Contracting offic-

ers should contact the Wage and Hour Division's regional offices when required by the subparts relating to these statutes unless otherwise specified. Addresses for these offices may be found at 29 CFR 1, Appendix B.

22.103 Overtime.

22.103-1 Definition.

"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.

22.103-2 Policy.

Contractors shall 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.

22.103-3 Procedures.

(a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.

(b) 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.

(c) When it becomes apparent during negotiations of applicable contracts (see [22.103-5\(b\)](#)) that overtime will be required in contract performance, the contracting officer shall 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 shall contain the information required by paragraph (b) of the clause at [52.222-2](#), Payment for Overtime Premiums.

22.103-4 Approvals.

(a) The contracting officer shall 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 [22.103-4\(a\)](#)) 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, shall 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 shall 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.

22.103-5 Contract clauses.

(a) The contracting officer shall insert the clause at [52.222-1](#), Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under [22.101-1\(e\)](#).

(b) The contracting officer shall 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—

- (1) A cost-reimbursement contract for operation of vessels is contemplated; or
- (2) 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.

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Subpart 22.10—Service Contract Act of 1965, as Amended

22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended ([41 U.S.C. 351](#), *et seq.*), the applicable provisions of the Fair Labor Standards Act of 1938, as amended ([29 U.S.C. 201](#), *et seq.*), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925).

22.1001 Definitions.

As used in this subpart—

“Act” or “Service Contract Act” means the Service Contract Act of 1965.

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

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

“Multiple year contracts” means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multiyear contracts (see [17.103](#)).

“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 Outer Continental Shelf lands 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 in a foreign country (29 CFR 4.112).

“Wage and Hour Division” means the unit in the Employment Standards Administration of the Department of Labor to which is assigned functions of the Secretary of Labor under the Act.

“Wage determination” means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the Act ([41 U.S.C. 351\(a\)](#) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

22.1002 Statutory requirements.

22.1002-1 General.

Service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under [41 U.S.C. 353\(d\)](#), service contracts may not exceed 5 years.

22.1002-2 Wage determinations based on prevailing rates.

Contractors performing on service contracts in excess of \$2,500 to which no predecessor contractor’s collective bargaining agreement applies shall 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.

22.1002-3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor’s collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines—

(1) After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or

(2) That the wages and fringe benefits are not the result of arm’s length negotiations.

(b) Paragraphs in this [Subpart 22.10](#) which deal with this statutory requirement and the Department of Labor’s implementing regulations are [22.1010](#), concerning notification to contractors and bargaining representatives of procurement dates; [22.1012-2](#), explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and [22.1013](#) and [22.1021](#), explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm’s length bargaining.

22.1002-4 Application of the Fair Labor Standards Act minimum wage.

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

22.1003 Applicability.

22.1003-1 General.

This [Subpart 22.10](#) 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 [22.1003-3](#) and [22.1003-4](#) of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

22.1003-2 Geographical coverage of the Act.

The Act applies to service contracts performed in the United States (see [22.1001](#)). The Act does not apply to contracts performed outside the United States.

22.1003-3 Statutory exemptions.

The Act does not apply to—

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

(b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act ([41 U.S.C. 35-45](#));

(c) 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;

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

(e) Any contract for public utility services;

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

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

22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act other than section 10 ([41 U.S.C. 358](#)). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards ([41 U.S.C. 353\(b\)](#)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels and the agency labor advisor to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in [22.1003-3](#) of this subsection, the Secretary of Labor has

exempted the following types of contracts from all provisions of the Act:

(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.

(c) *Contracts for maintenance, calibration or repair of certain equipment.*— (1) *Exemption.* The Secretary of Labor has exempted from the Act 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 (c)(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, Federal Supply Classification (FSC) Group 65, Class 6515, “Medical Diagnostic Equipment;” Class 6525, “X-Ray Equipment;” FSC Group 66, Class 6630, “Chemical Analysis Instruments;” and Class 6665, “Geographical and Astronomical 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) *Conditions.* The exemption at paragraph (c)(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 this subsection. (See [22.1006\(e\)](#).)

(3) *Affirmative determination and contract award.*

(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 [22.1003-4](#) (c)(2)(i) through (iii) of an offeror's certification will not be met, the contracting officer shall 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 Act 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 shall 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 (c)(2) of this subsection, the contracting officer shall make an affirmative determination and award the contract without the otherwise applicable Service Contract Act clause(s).

(iii) If the apparent successful offeror does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this subsection, the contracting officer shall incorporate in the contract the Service Contract Act clause (see [22.1006\(a\)](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(4) *Department of Labor determination.* (i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this subsection has not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act, 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) shall be followed.

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

(d) *Contracts for certain services.—* (1) *Exemption.* Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the Act contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(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 Davis-Bacon Act, 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 shall not include actual moving or storage of household goods and related services).

(2) *Conditions.* The exemption for the services in paragraph (d)(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 (d)(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 (d)(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) shall consider the practices of the existing contractor in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)(A) The apparent successful offeror certifies that the conditions in paragraphs (d)(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) *Contract award or resolicitation.* (i) If the apparent successful offeror does not certify to the conditions, the contracting officer shall insert in the contract the applicable Service Contract Act clause(s) (see [22.1006](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(ii) The contracting officer shall award the contract without the otherwise applicable Service Contract Act clause(s) if—

(A) The apparent successful offeror certifies to the conditions in paragraphs (d)(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 (d)(3)(ii) of this subsection are not met, then the contracting officer shall resolicit, amending the solicitation by removing the exemption provision from the solicitation as prescribed at [22.1006\(e\)\(3\)](#). The contract will include the applicable Service Contract Act clause(s) as prescribed at [22.1006](#) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

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

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

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

(i) Awarded under the Javits-Wagner-O'Day Act, [41 U.S.C. 47](#) (see [Subpart 8.7](#)).

(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 Section 4(c) of the Service Contract Act (see [22.1002-3](#)).

22.1003-5 Some examples of contracts covered.

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

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

- (c) Custodial, janitorial, housekeeping, and guard services.
- (d) Food service and lodging.
- (e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- (f) Snow, trash, and garbage removal.
- (g) Aerial spraying and aerial reconnaissance for fire detection.
- (h) Some support services at installations, including grounds maintenance and landscaping.
- (i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- (j) Electronic equipment maintenance and operation and engineering support services.
- (k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#).)
- (l) Operation, maintenance, or logistics support of a Federal facility.
- (m) Data collection, processing and analysis services.

22.1003-6 Repair distinguished from remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Public Contracts Act, rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down into individual component parts.
- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- (iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- (v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down.
- (ii) Outmoded parts are replaced.
- (iii) The item or equipment is rebuilt or reassembled.
- (iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.
- (v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include the following:

- (1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.
- (2) Repair of typewriters and other office equipment (but see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#)).
- (3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.
- (4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.
- (5) Reupholstering, reconditioning, repair, and refinishing of furniture.

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

- (a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);
- (b) Wage determination procedures (29 CFR part 4, subparts A and B);
- (c) Application of the Act (rulings and interpretations) (29 CFR Part 4, Subpart C);
- (d) Compensation standards (29 CFR Part 4, Subpart D);
- (e) Enforcement (29 CFR Part 4, Subpart E);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR part 8).

22.1005 [Reserved]

22.1006 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at [52.222-41](#), Service Contract Act of 1965, in solicitations and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Act 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 shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Act clauses as prescribed in this section 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 Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification;

(B) [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification; or

(C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)\(iii\)](#) or (iv) or [52.212-3\(k\)](#); and

(ii) The contracting officer has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the Service Contract Act does not apply to the contract. (In such case, insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or [52.222-53](#), Exemption from

Application of the Service Contract Act 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.)

(b) The contracting officer shall insert the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See [22.1016](#).)

(c)(1) The contracting officer shall insert the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Act of 1965, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see [22.1002-2](#) and [22.1002-3](#)). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at [52.222-43](#) (subparagraphs (d)(1), (2) and (3)), or [52.222-44](#) (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Act of 1965, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see [22.1002-2](#) and [22.1002-3](#)).

(3) The clauses prescribed in paragraph [22.1006\(c\)\(1\)](#) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a

Subpart 22.11—Professional Employee Compensation**22.1101 Applicability.**

The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees.

22.1102 Definition.

“Professional employee,” as used in this subpart, means any person meeting the definition of “employee employed in a bona fide . . . professional capacity” given in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics, and teaching). To be a professional employee, a person must not only

be a professional but must be involved essentially in discharging professional duties.

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at [52.222-46](#), Evaluation of Compensation for Professional Employees, in solicitations for negotiated contracts when the contract amount is expected to exceed \$650,000 and services are to be provided which will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employee compensation may be assessed adversely as one of the factors considered in making an award.

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Subpart 22.12—Nondisplacement of Qualified Workers Under Service Contracts

22.1200 Scope of subpart.

This subpart prescribes policies and procedures for implementing Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, and related Secretary of Labor regulations and instructions (see 29 CFR part 9).

22.1201 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 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 United States jurisdiction or any United States base or possession in a foreign country (see 29 CFR 4.112).

22.1202 Policy.

(a) When a service contract succeeds a contract for performance of the same or similar services, as defined at 29 CFR 9.2, at the same location, the successor contractor and its subcontractors are required to offer those service employees that are employed under the predecessor contract, and whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. Executive Order 13495 generally prohibits employment openings under the successor contract until such right of first refusal has been provided, when consistent with applicable law.

(b) Nothing in Executive Order 13495 shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see subpart [19.13](#)), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 may, in certain circumstances, conflict with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495 and this subpart.

22.1203 Applicability.

22.1203-1 General.

This subpart applies to service contracts that succeed contracts for the same or similar services (29 CFR 9.2) at the same location.

22.1203-2 Exemptions.

(a) This subpart does not apply to—

(1) Contracts and subcontracts under the simplified acquisition threshold;

(2) Contracts or subcontracts awarded pursuant to 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts or subcontracts with sheltered workshops employing the “severely handicapped” as described in 40 U.S.C. 593;

(4) Agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph Sheppard Act, 20 U.S.C. 107; or

(5) Service employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the service employees were not deployed in a manner that was designed to avoid the purposes of this subpart.

(b) The exemptions in paragraphs (a)(2) through (a)(4) of this subsection apply when either the predecessor or successor contract has been awarded for services produced or provided by the “severely handicapped.”

22.1203-3 Waiver.

(a) The senior procurement executive of the procuring agency may waive some or all of the provisions of this subpart after determining in writing that the application of this subpart would not serve the purposes of Executive Order 13495 or would impair the ability of the Federal Government to procure services on an economical and efficient basis. Such waivers may be made for a contract, subcontract, or purchase order, or with respect to a class of contracts, subcontracts, or purchase orders. See 29 CFR 9.4(d)(4) for regulatory provisions addressing circumstances in which a waiver could or would not be appropriate. The waiver must be reflected in a written analysis as described in 29 CFR 9.4(d)(4)(i) and must be completed by the contract solicitation date, or the waiver is inoperative. The senior procurement executive shall not redelegate this waiver authority.

(b)(1) When an agency exercises its waiver authority with respect to any contract, subcontract, or purchase order, the contracting officer shall direct the contractor to notify affected workers and their collective bargaining representative in writing, no later than five business days after the solicitation issuance date, of the agency’s determination. The notice shall include facts supporting the determination. The contracting officer’s failure to direct that the contractor provide the notice as provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at [52.222-17](#) in the solicitation.

(2) Where a contracting agency waives application to a class of contracts, subcontracts, or purchase orders, the con-

tracting officer shall, with respect to each individual solicitation, direct the contractor to notify incumbent workers and their collective bargaining representatives in writing, no later than five business days after each solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at [52.222-17](#) in the solicitation.

(3) In addition, the agency shall notify the Department of Labor of its waiver decision and provide the Department of Labor with a copy of its written analysis no later than five business days after the solicitation issuance date (see 29 CFR 9.4(d)(2)). Failure to comply with this notification requirement shall render the waiver decision inoperative, and the contracting officer shall include the clause at [52.222-17](#) in the solicitation. The waiver decision and related written analysis shall be sent to the following address: U.S. Department of Labor, Wage and Hour Division, Branch of Government Contracts Enforcement, 200 Constitution Avenue, Room S-3006, Washington, D.C. 20210, or email to: Displaced@dol.gov.

22.1203-4 Method of job offer.

A job offer made by a successor contractor must be a bona fide express offer of employment on the contract. Each bona fide express offer made to a qualified service employee on the predecessor contract must have a stated time limit of not less than 10 days for an employee response. Prior to the expiration of the 10-day period, the contractor is prohibited from offering employment on the contract to any other person, subject to the exceptions at [22.1203-5](#). Any question concerning an employee's qualifications shall be decided based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and a contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12(b) for regulatory provisions addressing circumstances in which a bona fide offer of employment can occur.)

22.1203-5 Exceptions.

(a) A successor contractor or its subcontractors are not required to offer employment to any service employee of the predecessor contractor who—

- (1) Will be retained by the predecessor contractor.

(2) The successor contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job. (See 29 CFR 9.12(c)(4) for regulatory provisions addressing circumstances in which this exception would or would not be appropriate.)

(b) A successor contractor or its subcontractors may employ under the contract any of its current service employees who (1) have worked for the successor contractor or its subcontractors for at least three months immediately preceding the commencement of the successor contract, and (2) would otherwise face lay-off or discharge.

(c) The successor contractor bears the responsibility of demonstrating the appropriateness of claiming any of the preceding exceptions and the exemption listed at [22.1203-2\(a\)\(5\)](#) involving nonfederal work.

22.1203-6 Reduced staffing.

A successor contractor and its subcontractors may employ fewer service employees than the predecessor contractor employed in connection with performance of the work. Thus, the successor contractor need not offer employment on the contract to all service employees on the predecessor contract, but must offer employment only to the number of eligible service employees the successor contractor believes necessary to meet its anticipated staffing pattern. Where a successor contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract. (See 29 CFR 9.12(d) for regulatory provisions addressing circumstances in which reduced staffing can occur.)

22.1204 Certified service employee lists.

(a) Not less than 30 days before completion of the contract, the predecessor contractor is required to furnish to the contracting officer a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The certified list must also contain anniversary dates of employment of each service employee under the contract and subcontracts for services. The information on this list is the same as that on the seniority list required by paragraph (n) of the clause at [52.222-41](#), Service Contract Act of 1965. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of [52.222-41\(n\)](#) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(b) Immediately upon receipt of the certified service employee list but not before contract award, the contracting

officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

22.1205 Notification to contractors and service employees.

(a) The contracting officer shall direct that the predecessor contractor provides written notice to service employees of their possible right to an offer of employment with the successor contractor. The written notice shall be—

- (1) Posted in a conspicuous place at the worksite; or
- (2) Delivered to the service employees individually. If

such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(b) Contracting officers may advise contractors to provide the notice in Appendix B to 29 CFR chapter 9. Where a significant portion of the predecessor contractor's workforce is not fluent in English, the contractor shall provide the notice in English and the language(s) with which service employees are more familiar. English and Spanish versions of the notice are available on the Department of Labor website at <http://www.dol.gov/whd/govcontracts>.

22.1206 Remedies and sanctions for violations of this subpart.

(a) The Secretary of Labor has the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring the successor contractor to offer employment, in positions for which the employees are qualified, to service

employees from the predecessor contract and payment of wages lost. (See 29 CFR 9.24(a)).

(b) After an investigation (see 29 CFR 9.23) and a determination by the Administrator, Wage and Hour Division, Department of Labor, that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld as are necessary to pay the monies due. Upon the final order of the Secretary of Labor that such monies are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement. (See 29 CFR 9.24(c)).

(c) If the contracting officer or the Administrator, Wage and Hour Division, Department of Labor, finds that the predecessor contractor has failed to provide the list required by [22.1204](#), the contracting officer may, in his or her discretion, or on request by the Administrator, suspend contract payment until such time as the contractor provides the list to the contracting officer.

(d) The Secretary of Labor may also suspend or debar a contractor or subcontractor for a period of up to three years for violations of 29 CFR part 9.

22.1207 Contract clause.

The contracting officer shall insert the clause at [52.222-17](#), Nondisplacement of Qualified Workers, in solicitations and contracts for (1) service contracts, as defined at [22.001](#), (2) that succeed contracts for performance of the same or similar work at the same location and (3) that are not exempted by [22.1203-2](#) or waived in accordance with [22.1203-3](#).

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52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	52.217-4	Evaluation of Options Exercised at Time of Contract Award.
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	52.217-5	Evaluation of Options.
52.215-22	Limitations on Pass-Through Charges—Identification of Subcontract Effort.	52.217-6	Option for Increased Quantity.
52.215-23	Limitations on Pass-Through Charges.	52.217-7	Option for Increased Quantity—Separately Priced Line Item.
52.216-1	Type of Contract.	52.217-8	Option to Extend Services.
52.216-2	Economic Price Adjustment—Standard Supplies.	52.217-9	Option to Extend the Term of the Contract.
52.216-3	Economic Price Adjustment—Semistandard Supplies.	52.218	[Reserved]
52.216-4	Economic Price Adjustment—Labor and Material.	52.219-1	Small Business Program Representations.
52.216-5	Price Redetermination—Prospective.	52.219-2	Equal Low Bids.
52.216-6	Price Redetermination—Retroactive.	52.219-3	Notice of HUBZone Set-Aside or Sole Source Award.
52.216-7	Allowable Cost and Payment.	52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
52.216-8	Fixed Fee.	52.219-5	[Reserved]
52.216-9	Fixed Fee—Construction.	52.219-6	Notice of Total Small Business Set-Aside.
52.216-10	Incentive Fee.	52.219-7	Notice of Partial Small Business Set-Aside.
52.216-11	Cost Contract—No Fee.	52.219-8	Utilization of Small Business Concerns.
52.216-12	Cost-Sharing Contract—No Fee.	52.219-9	Small Business Subcontracting Plan.
52.216-13	[Reserved]	52.219-10	Incentive Subcontracting Program.
52.216-14	[Reserved]	52.219-11	Special 8(a) Contract Conditions.
52.216-15	Predetermined Indirect Cost Rates.	52.219-12	Special 8(a) Subcontract Conditions.
52.216-16	Incentive Price Revision—Firm Target.	52.219-13	Notice of Set-Aside of Orders.
52.216-17	Incentive Price Revision—Successive Targets.	52.219-14	Limitations on Subcontracting.
52.216-18	Ordering.	52.219-15	[Reserved]
52.216-19	Order Limitations.	52.219-16	Liquidated Damages—Subcontracting Plan.
52.216-20	Definite Quantity.	52.219-17	Section 8(a) Award.
52.216-21	Requirements.	52.219-18	Notification of Competition Limited to Eligible 8(a) Concerns.
52.216-22	Indefinite Quantity.	52.219-19	[Reserved]
52.216-23	Execution and Commencement of Work.	52.219-20	[Reserved]
52.216-24	Limitation of Government Liability.	52.219-21	[Reserved]
52.216-25	Contract Definitization.	52.219-22	Small Disadvantaged Business Status.
52.216-26	Payments of Allowable Costs Before Definitization.	52.219-23	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
52.216-27	Single or Multiple Awards.	52.219-24	Small Disadvantaged Business Participation Program—Targets.
52.216-28	Multiple Awards for Advisory and Assistance Services.	52.219-25	Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
52.216-29	Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.	52.219-26	Small Disadvantaged Business Participation Program—Incentive Subcontracting.
52.216-30	Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.	52.219-27	Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.
52.216-31	Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.	52.219-28	Post-Award Small Business Program Rerepresentation.
52.217-1	[Reserved]	52.219-29	Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.
52.217-2	Cancellation Under Multi-year Contracts.	52.219-30	Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.
52.217-3	Evaluation Exclusive of Options.	52.220	[Reserved]

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- 52.221 [Reserved]
 - 52.222-1 Notice to the Government of Labor Disputes.
 - 52.222-2 Payment for Overtime Premiums.
 - 52.222-3 Convict Labor.
 - 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
 - 52.222-5 Davis-Bacon Act—Secondary Site of the Work.
 - 52.222-6 Davis-Bacon Act.
 - 52.222-7 Withholding of Funds.
 - 52.222-8 Payrolls and Basic Records.
 - 52.222-9 Apprentices and Trainees.
 - 52.222-10 Compliance with Copeland Act Requirements.
 - 52.222-11 Subcontracts (Labor Standards).
 - 52.222-12 Contract Termination—Debarment.
 - 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
 - 52.222-14 Disputes Concerning Labor Standards.
 - 52.222-15 Certification of Eligibility.
 - 52.222-16 Approval of Wage Rates.
 - 52.222-17 Nondisplacement of Qualified Workers.
 - 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 Walsh-Healey Public Contracts Act.
 - 52.222-21 Prohibition of Segregated Facilities.
 - 52.222-22 Previous Contracts and Compliance Reports.
 - 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
 - 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
 - 52.222-25 Affirmative Action Compliance.
 - 52.222-26 Equal Opportunity.
 - 52.222-27 Affirmative Action Compliance Requirements for Construction.
 - 52.222-28 [Reserved]
 - 52.222-29 Notification of Visa Denial.
 - 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
 - 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
 - 52.222-32 Davis-Bacon Act—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 Affirmative Action for Workers with Disabilities.
 - 52.222-37 Employment Reports on Veterans.
 - 52.222-38 Compliance with Veterans’ Employment Reporting Requirements.
 - 52.222-39 [Reserved]
 - 52.222-40 Notification of Employee Rights Under the National Labor Relations Act.
 - 52.222-41 Service Contract Act of 1965.
 - 52.222-42 Statement of Equivalent Rates for Federal Hires.
 - 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
 - 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
 - 52.222-45 [Reserved]
 - 52.222-46 Evaluation of Compensation for Professional Employees.
 - 52.222-47 [Reserved]
 - 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
 - 52.222-49 Service Contract Act—Place of Performance Unknown.
 - 52.222-50 Combating Trafficking in Persons.
 - 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
 - 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
 - 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.
 - 52.222-54 Employment Eligibility Verification.
 - 52.223-1 Biobased Product Certification.
 - 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
 - 52.223-3 Hazardous Material Identification and Material Safety Data.
 - 52.223-4 Recovered Material Certification.
 - 52.223-5 Pollution Prevention and Right-to-Know Information.
 - 52.223-6 Drug-Free Workplace.
 - 52.223-7 Notice of Radioactive Materials.
 - 52.223-8 [Reserved]
 - 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
 - 52.223-10 Waste Reduction Program.
 - 52.223-11 Ozone-Depleting Substances.
 - 52.223-12 Refrigeration Equipment and Air Conditioners.
 - 52.223-13 [Reserved]
 - 52.223-14 [Reserved]
 - 52.223-15 Energy Efficiency in Energy-Consuming Products.
 - 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

pose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—
COMMERCIAL ITEMS (JAN 2013)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEPT 2006), with Alternate I (OCT 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUNE 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (AUG 2012) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).

(6) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (DEC 2010) ([31 U.S.C. 6101 note](#)).

(7) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (FEB 2012) ([41 U.S.C. 2313](#)).

(8) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C of Pub. L. 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

(9) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) ([15 U.S.C. 657a](#)).

(10) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(11) [Reserved]

(12)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (NOV 2011) ([15 U.S.C. 644](#)).

(ii) Alternate I (NOV 2011).

(iii) Alternate II (NOV 2011).

(13)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-7](#).

(iii) Alternate II (MAR 2004) of [52.219-7](#).

(14) [52.219-8](#), Utilization of Small Business Concerns (JAN 2011) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(15)(i) [52.219-9](#), Small Business Subcontracting Plan (JAN 2011) ([15 U.S.C. 637\(d\)\(4\)](#)).

(ii) Alternate I (OCT 2001) of [52.219-9](#).

(iii) Alternate II (OCT 2001) of [52.219-9](#).

(iv) Alternate III (JUL 2010) of [52.219-9](#).

(16) [52.219-13](#), Notice of Set-Aside of Orders (NOV 2011) ([15 U.S.C. 644\(r\)](#)).

(17) [52.219-14](#), Limitations on Subcontracting (NOV 2011) ([15 U.S.C. 637\(a\)\(14\)](#)).

(18) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

(19)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (JUNE 2003) of [52.219-23](#).

(20) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (DEC 2010) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(21) [52.219-26](#), Small Disadvantaged Business Participation Program— Incentive Subcontracting

(OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (22) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) ([15 U.S.C. 657 f](#)).

— (23) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2012) ([15 U.S.C. 632\(a\)\(2\)](#)).

— (24) [52.219-29](#), Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2012) ([15 U.S.C. 637\(m\)](#)).

— (25) [52.219-30](#), Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (APR 2012) ([15 U.S.C. 637\(m\)](#)).

— (26) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

— (27) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (MAR 2012) (E.O. 13126).

— (28) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

— (29) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

— (30) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

— (31) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

— (32) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

— (33) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

— (34) [52.222-54](#), Employment Eligibility Verification (JUL 2012). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

— (35)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (36) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (37)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

— (ii) Alternate I (DEC 2007) of [52.223-16](#).

— (38) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).

— (39) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

— (40)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (NOV 2012) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

— (ii) Alternate I (MAR 2012) of [52.225-3](#).

— (iii) Alternate II (MAR 2012) of [52.225-3](#).

— (iv) Alternate III (NOV 2012) of [52.225-3](#).

— (41) [52.225-5](#), Trade Agreements (NOV 2012) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (42) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (43) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (44) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (45) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (46) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (47) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (48) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (49) [52.232-36](#), Payment by Third Party (FEB 2010) ([31 U.S.C. 3332](#)).

— (50) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (51)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.222-17](#), Nondisplacement of Qualified Workers (JAN 2013) (E.O. 13495).

— (8) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

— (9) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(ii) [52.219-8](#), Utilization of Small Business Concerns (DEC 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [52.222-17](#), Nondisplacement of Qualified Workers (JAN 2013) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(viii) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

— Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (JUL 2012).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d).

nated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

Alternate II (Jul 2012). As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.219-8](#), Utilization of Small Business Concerns (Dec 2010) ([15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(D) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(E) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).

(F) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).

(G) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(H) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(I) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(J) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(K) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

(L) [52.222-54](#), Employment Eligibility Verification (Jul 2012).

(M) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(N) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor’s delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.*(1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor’s expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.*(1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice “FAST PAY.” Invoices not prominently marked “FAST PAY” via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act 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 Davis-Bacon and Related Act Regulations.

As prescribed in [22.407\(a\)](#), insert the following clause:

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts 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 [22.407\(a\)](#), insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

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 shall 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 [22.407\(a\)](#), insert the following clause:

CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) 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 section 3(a) of the Davis-Bacon Act 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 section 3(a) of the Davis-Bacon Act 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 [22.407\(b\)](#), insert the following clause:

APPROVAL OF WAGE RATES (FEB 1988)

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 Davis-Bacon Act 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 Nondisplacement of Qualified Workers.

As prescribed in [22.1207](#), insert the following clause:

NONDISPLACEMENT OF QUALIFIED WORKERS (JAN 2013)

(a) “Service employee”, as used in this clause, 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.

(b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.

(1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor Contractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employ-

ment under this contract, to any person prior to having complied fully with this obligation.

(i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bonafide offer of employment).

(c)(1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors (i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (*e.g.*, it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The

HUBZone small business Contractor or subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)(1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually.

If such delivery is via e-mail, the notification must result in an

electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e)(1) If required in accordance with [52.222-41\(n\)](#), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of [52.222-41\(n\)](#) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(f) The Contractor and subcontractor shall maintain the following records (regardless of format, *e.g.*, paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause ([52.223-1](#)) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: displaced@dol.gov.

(h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Contractor shall 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. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees working under the contract, the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension

of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(1) *Subcontracts.* In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures—

(1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;

(2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and

(3) The recordkeeping requirements of paragraph (f) of this clause.

(End of clause)

52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

As prescribed in [22.1505\(a\)](#), insert the following provision:

CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2001)

(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 [22.1505\(b\)](#), insert the following clause:

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (MAR 2012)

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more;

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is \$77,494 or more; or

(4) Armenia, Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or the United Kingdom and the anticipated value of the acquisition is \$202,000 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, or the equivalent at [52.212-3\(i\)](#), 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 official may suspend the Contractor in accordance with procedures in FAR [Subpart 9.4](#).

(3) The 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 Walsh-Healey Public Contracts Act.

As prescribed in [22.610](#), insert the following clause in solicitations and contracts covered by the Act:

WALSH-HEALEY PUBLIC CONTRACTS ACT (OCT 2010)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$15,000, and is subject to the Walsh-Healey Public Contracts Act, as amended ([41 U.S.C. 35-45](#)), the following terms and conditions apply:

(a) All stipulations required by the Act 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 shall 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 handicapped workers 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. 40](#)).

(End of clause)

52.222-21 Prohibition of Segregated Facilities.

As prescribed in [22.810](#)(a)(1), insert the following clause:

PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every sub-contract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in [22.810](#)(a)(2), insert the following provision:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that—

It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

It has, has not filed all required compliance reports; and

Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.

As prescribed in [22.810](#)(b), insert the following provision:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO
ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR
CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Goals for Minority
Participation for
Each Trade**

[Contracting Officer shall
insert goals]

**Goals for Female
Participation for
Each Trade**

[Contracting Officer shall
insert goals]

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is _____ [Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving the state, county, and city].

(End of provision)

**52.222-24 Preaward On-Site Equal Opportunity
Compliance Evaluation.**

As prescribed in 22.810(c), insert the following provision:

**PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE
EVALUATION (FEB 1999)**

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of provision)

52.222-25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision:

AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that—

- (a) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- (b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

52.222-26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause:

EQUAL OPPORTUNITY (MAR 2007)

(a) *Definition.* "United States," as used in this clause, 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.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees

who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation;

and

(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the

12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

Alternate I (Feb 1999). As prescribed in [22.810\(e\)](#), add the following as a preamble to the clause:

NOTICE: The following terms of this clause are waived for this contract: _____ [*Contracting Officer shall list terms*].

52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in [22.810\(f\)](#), insert the following clause:

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.	19.1204(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.	19.1204(c)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set Aside.	19.1407	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-28 Post-Award Small Business Program Representation.	19.309(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.	19.1506(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.	19.1506(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-5 Davis-Bacon Act—Secondary Site of the Work.	22.407(h)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-6 Davis-Bacon Act.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-17 Nondisplacement of Qualified Workers	22.1207	C	Yes	I	A	A	A	A	A	A	A	A	A	R	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.	22.1505(a)	P	No	K	A	A													A		A		A
52.222-19 Child Labor—Cooperation with Authorities and Remedies.	22.1505(b)	C	Yes	I	A	A													A		A		A
52.222-20 Walsh-Healey Public Contracts Act.	22.610	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-21 Prohibition of Segregated Facilities.	22.810(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	22.810(b)	P	Yes						A												A		
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.	22.810(c)	P	Yes	L	A	A	A	A	A	A						A	A	A	A	A			A
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A						A	A	A	A	A	A		
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes						A												A		
52.222-29 Notification of Visa Denial.	22.810(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).	22.407(e)	C							A														
52.222-31 Davis Bacon Act—Price Adjustment (Percentage Method).	22.407(f)	C							A														
52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).	22.407(g)	C							A														
52.222-33 Notice of Requirement for Project Labor Agreement.	22.505(a)(1)	P	Yes						A														
Alternate I	22.505(a)(1)	P	Yes						A														
Alternate II	22.505(a)(2)	P	Yes						A														
52.222-34 Project Labor Agreement.	22.505(b)(1)	C	Yes						A														
Alternate I	22.505(b)(2)	C	Yes						A														
52.222-35 Equal Opportunity for Veterans.	22.1310(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	22.1310(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.222-36 Affirmative Action for Workers with Disabilities.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A