

CHAPTER 1 - GENERAL PROVISIONS

1-1. Purpose. Inasmuch as Reorganization Plan No. 14 of 1950 places primary responsibility for the enforcement of construction labor standards upon the contracting agencies, this ER is devoted primarily to this mission. This regulation is designed to provide basic guidelines for all Corps employees tasked with the administration and enforcement of statutory and contractual labor standards on construction contracts. Its primary aim is to effect a consistent and uniform enforcement program throughout the Corps. Achieving compliance with labor standards requires the exercise of ingenuity, initiative and cooperation on the part of all personnel involved with the program. With the exception of very complex and unusual problems, this ER contains the answers to questions that most generally arise in connection with contract labor relations functions. Official acquisition policy is found in the Federal Acquisition Regulation (FAR) and its supplements. If there is any conflict between the FAR system requirements and this regulation, the current FAR system rules apply.

1-2. Applicability. This regulation is applicable to all Major Subordinate Commands (MSC), districts, laboratories, centers, and field operating activities under the jurisdiction of the Chief of Engineers.

1-3. Distribution. Approved for public release; distribution is unlimited.

1-4. References.

- a. 40 USC Sections 276a-ii(7); 276C; and 327-333
- b. 29 CFR Parts 1,3,4 and 5
- c. FAR Section 1.105, Subparts 22.3, 22.4 and 52.222
- d. DFARS, Part 222
- e. EFARS, Part 22
- f. EP 415-1-260
- g. Department of Labor (DOL) All Agency Memoranda Nos. 118, 123, 125, 130, 131, 141, and 157.
- h. Department of Labor Wage Appeals Board Decision Nos. 64-3, 76-6,

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80-3, 82-8, 83-7, 85-16, 86-33, 90-20, 94-01 and 94-20, and Administrative Review Board Decision No. 96-133.

- i. Comptroller General Decision Numbers B-148076 and B-215023
- j. Solicitor of Labor Opinion Letters DB-8, 9, 12, 22, 26, 40, and 45

1-5. Policy. The development and maintenance of good relations between management, labor, and the Corps of Engineers is required for the efficient and expeditious conduct of the Corps' construction mission. Accomplishment of this objective requires a continuous effort on the part of all personnel¹ assigned to construction activities. The proper enforcement of these provisions must be given the same consideration as all other requirements of the contract and specifications. We cannot emphasize too strongly the importance of our responsibilities in the administration and enforcement of these provisions. A successful program is dependent upon you who are responsible for the labor functions at each designated level. Your efforts to ensure that labor standards deficiencies are detected promptly and addressed in a responsive manner are essential elements in our service to the public.

1-6. Background.

a. The administration of the contract labor program within the Corps of Engineers is governed by the basic labor policy of the Department of Defense in Part 22 of the FAR. The program has been further implemented by Part 222 of the AFARS and EFARS and various circulars and regulations issued by the Chief of Engineers. Additionally, the Secretary of Labor has issued regulations implementing the labor statutes which are published in Title 29, Subpart A, Code of Federal Regulations.

b. The various labor laws were enacted by Congress to prevent exploitation of labor on Government contracts. The laws incorporated within the Corps of Engineers contracts afford each laborer and mechanic employed on the contract the right to receive a prescribed minimum rate subject to certain overtime requirements without subsequent rebate or "kickback." In addition to the statutes, many regulations have been issued as provided in the law itself. These regulations are also applicable to the contractors. Failure

¹"Wherever, the word 'man', 'men' or their related pronouns appear, either as words or as parts of words (other than when referring to a specific individual) they have been used for literary purposes and are meant in their generic sense to include both female and male sexes."

of a contractor to comply with the labor provisions, coupled with lax enforcement, results in expensive investigations which may require the imposition of penalties, termination of the contract, debarment, and, in some cases, criminal action. It should also be noted that a contractor's disregard for labor standards obligations is frequently accompanied by a disregard for the technical provisions of the contract. In essence, quality assurance is a multi-faceted task.

c. Many labor relations problems involve interpretation of law, and for this reason, questions will arise in the field that are not covered in this regulation. Such problems should be brought to the immediate attention of the District Counsel and the District Labor Advisor.

1-7. Responsibilities.

a. Contracting Officer (CO). The enforcement of labor standards provisions is the responsibility of the CO; and adequate means of assuring compliance are provided by the contract and regulations of the Secretary of Labor.

b. Contractors. The contract labor standards provisions apply to all contractors and subcontractors, regardless of their employment policies. The contractor is responsible for: procurement, supervision, and management of all labor required for the completion of the work; compliance with Federal labor standards applicable to his contract and regulations pertaining thereto; and subcontractors' compliance with the contract labor standards provisions.

c. Administrative Contracting Officers (ACO). To enable the District Engineer to accomplish his mission, ACOs and their staffs must fully understand the basic requirements and perform specific duties to accomplish program objectives. Each ACO and his staff must realize at all times that the labor provisions are a part of the contract and must be viewed in the same light and enforced just as vigorously as all other provisions of the contract. Quality Assurance (QA) Representatives cannot, of course, observe every hour of work of each laborer or mechanic employed by a contractor and his subcontractors. Even if this were possible, it would be unnecessary and undesirable. The ACOs staff shall be responsible for:

(1) The performance of all required checking of prime and subcontractor's payrolls and field operations to determine their compliance with the labor standards provisions of the contract.

(2) The implementation of the instructions contained in this regulation to assure compliance by all contractors and subcontractors.

(3) The maintenance of the records and submission of the reports prescribed in this regulation.

(4) The appropriate delegation of functions. Although the enforcement methods and procedures in this regulation are the responsibility of the ACO office, it does not mean that there might not be advantages in varying from this outline the functions shown to be performed by the ACO office or QA Representative as to more effectively use the available personnel. It must be clearly recognized, however, that only the QA Representative at the site of the work will have the knowledge and background necessary to perform certain activities of the enforcement procedures. With respect to "detail checking of payrolls," it is strongly recommended that it be performed regularly by an employee specifically delegated this responsibility.

d. District Labor Advisor. The District Labor Advisor or Contractor Industrial Relations Specialist (CIRS) is responsible for the administration of all labor standards programs within the district. The CIRS advises, assists and instructs USACE personnel on labor standards matters during all phases of the construction mission. Based on public expectations, statutory obligations, regulatory requirements, and organizational demands, the CIRS are essential to the success of the district's mission. In other words, the CIRS is responsible for "preventive industrial relations." That is, through pro-active measures, the CIRS seeks to prevent contractor non-compliance as well as disruption of the USACE construction mission.

(1) The Labor Advisor will conduct full-scale investigations (when applicable or when requested by higher headquarters). The Labor Advisor's investigation will be based on the guidelines contained within All-Agency Memorandum No. 118. This memo furnished the DOL's "Investigation and Enforcement Manual With Respect to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction." Although the DOL's Enforcement Manual has not been updated and much of the material has been revised due either to statutory amendment (i.e., elimination of the daily overtime requirement under CWHSSA) or regulatory revision, it nonetheless provides a useful guide for such investigations.

(2) The Labor Advisor also serves as the point of contact for any DOL-initiated investigations. The Labor Advisor will coordinate such investigations and apprise USACE personnel of the status and findings of these investigations.