

## CHAPTER 2 - LABOR LAWS, REGULATIONS AND CONTRACT PROVISIONS

2-1. General. Each of the statutes and their implementing regulations discussed below reflect the Federal Government's commitment to a policy of labor protection. Enacted at different times and under different administrations, these statutes seek to eliminate two destabilizing tendencies in the Federal procurement process. First, the impetus toward wage-cutting is unavoidable in a system predicated upon the award of contracts through competitive bidding to the lowest responsible, responsive bidder. Second, while monopsonist (monopsony is defined as the domination of a market by a single buyer) pressures are not as pervasive as they perhaps once were, they are nonetheless a consideration at many of the remote facilities where the Corps performs. In other words, a single buyer of service, i.e., construction, is in a position of depressing bids and by extension, wages. These statutes, therefore, are designed to remove the wage-depressing tendencies noted above by establishing a floor below which the wage rate may not fall.

2-2. The Davis-Bacon Act (40 USC 276a-a(7)) applies to construction contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party. It specifies that not less than minimum wages be paid to the various classes of laborers and mechanics employed on a particular project based on the wages prevailing in the area as determined by the Secretary of Labor. PL 88-349 amended the Act as of July 2, 1964, to include fringe benefits in the "prevailing rate."

2-3. The McNamara-O'Hara Service Contract Act (41 USC 351-358) applies to Federal contracts for services in the United States in excess of \$2,500 through the use of service employees. Service employees include all employees working under a contract except those in executive, administrative or professional capacities as those terms are defined in 29 CFR 541. This definition therefore includes many "white collar" employees formerly excluded prior to the 1976 amendment to the Act. The Act requires minimum wages and fringe benefits as determined to be prevailing by the Secretary of Labor. The DOL has primary enforcement responsibility for this law.

2-4. The Walsh-Healey Act (41 USC 35-45) prescribes minimum wages to be paid contractor's employees on contracts in excess of \$10,000 for the manufacture or furnishing of supplies. The DOL has not issued wage determinations under the Act for many years. Accordingly, the Fair Labor Standards Act minimum wage generally applies. Enforcement responsibility rests with the DOL.

2-5. The Contract Work Hours and Safety Standards Act (40 USC 327-333) applies to both service and construction contracts in excess of \$100,000 and requires employees to be paid time and one-half for all hours worked in excess of 40 per week. The Act also contains

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certain health and safety standards.

2-6. The Copeland Act (40 USC 276c and 18 USC 874) makes it unlawful to induce, by force or otherwise, any person employed within the United States in the construction or repair of public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment.

2-7. The Fair Labor Standards Act (29 USC 201) provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division within the DOL for purposes of interpretation and enforcement (including investigations and inspections of Government contracts), and prohibits oppressive child labor. The Act applies to all employees, unless otherwise exempted, who are engaged in (1) interstate commerce or foreign commerce; (2) the production of goods for such commerce; or (3) any closely related process or occupation essential to such production. Enforcement responsibilities lie with the DOL.

2-8. The Miller Act (40 USC 270(a)) requires that before any contract exceeding \$25,000 in amount for the construction, alteration, or repair of any public building, or public work, is awarded to any person, that person must furnish payment and performance bonds to the United States. The payment bonds are for the protection of all persons supplying labor and material. This allows workers not paid prevailing rates to collect against the Surety since they have no enforceable rights against the United States and cannot acquire a lien on a public building.

2-9. Executive Orders. Federal contract standards are also established by the President through the promulgation of Executive Orders. Generally, these Executive Orders require each agency of the Federal Government to incorporate certain clauses in Federal contracts. Among the most relevant Executive Orders are those noted below.

a. Executive Orders 11246, 11375 and 12086 provide that contractors and subcontractors will act affirmatively to ensure that applicants are employed, and that employees are treated equally during employment, without regard to race, color, religion, sex or national origin. The Secretary of Labor is responsible for the administration and enforcement of prescribed parts of these Orders, and the adoption of rules and regulations necessary to achieve their intended purposes. The head of each agency is responsible for ensuring that the requirements of this subpart are carried out within the agency, and for cooperating with and assisting the OFCCP in fulfilling its responsibilities. See FAR 22.8 for additional information. Construction contractors that hold a nonexempt government construction contract are required to meet the contract terms and conditions for affirmative action requirements. The current goal for the utilization of women is 6.9% of work hours and

applies to all of a contractor's construction sites regardless of where the Federal or federally assisted contract is being performed. This goal was originally published in the Federal Register of April 7, 1978, 43 FR 14899, 14900, as Appendix A. Pursuant to a Notice published in the Federal Register of December 30, 1980, 45 FR 5750, 85751, the 6.9% goal was extended indefinitely. The current goals for the utilization of minorities were published in the Federal Register of October 3, 1980, 45 FR 65979, 65984, as Appendix B-80. Questions regarding application of these goals should be directed to the DOL's Office of Federal Contract Compliance Programs.

b. Executive Order 13201 requires contractors to post notices in their plants, offices and work sites apprising affected workers of their right to seek a refund of their union dues if the subject union expends their payments on administrative activities unrelated to collective bargaining, contract administration, or grievance adjustment.

c. Executive Order 13202 prohibits federal agencies from the award of any construction contract which would (a) require or prohibit bidders, contractors or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction projects or (b) otherwise discriminate against bidders, offerors, contractors or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or other related construction projects. Executive Order 13208 amended Executive Order 13202 to allow for the "grandfathering" of existing Project Labor Agreements (PLAs) under certain conditions.

2-10. Contract Clauses. Each of the above-noted labor protective statutes are incorporated within particular contracts depending upon the nature (construction/ service/supply) of the contract. To illustrate, listed below are those clauses which are generally required for construction contracts subject to the Davis-Bacon Act. These clauses are further identified by the accompanying FAR references.

- a. Equal Opportunity (FAR 52.222-26)
- b. Affirmative Action Compliance Requirements for Construction (FAR 52.222-27)
- c. Convict Labor (FAR 52.222-3)
- d. Davis-Bacon Act (FAR 52.222-6)
- e. Contract Work Hours and Safety Standards Act-Overtime Compensation (FAR 52.222-4)

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- f. Withholding of Funds (FAR 52.222-7)
- g. Payrolls and Basic Records (FAR 52.222-8)
- h. Apprentices and Trainees (FAR 52-222-9)
- i. Compliance with Copeland Act Requirements (FAR 52.222-10)
- j. Subcontracts (Labor Standards) (FAR 52.222-11)
- k. Contract Termination - Debarment (FAR 52.222-12)
- l. Compliance with Davis-Bacon and Related Act Regulations (FAR 52.222-13)
- m. Disputes Involving Labor Standards (FAR 52.222-14)
- n. Certification of Eligibility (FAR 52.222-15)
- o. Notice to the Government of Labor Disputes (FAR 52.222-1)
- p. Approval of Wage Rates (FAR 52.222-16)
- q. Labor Standards for Construction Work – Facilities Contracts (FAR 52.222-17)
- r. Certification Regarding Knowledge of Child Labor for Listed End Products (FAR 52.222-18)
- s. Child Labor – Cooperation with Authorities and Remedies (FAR 52.222-19)
- t. Prohibition of Segregated Facilities (FAR 52.222-21)
- u. Previous Contracts and Compliance Reports (FAR 52.222-22)
- v. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (FAR 52.222-24)
- w. Pre-Award On-Site Equal Opportunity Compliance Evaluation (FAR 52.222-24)
- x. Affirmative Action Compliance (FAR 52.222-25)

- y. Affirmative Action Compliance Requirements for Construction (FAR 52.222-27)
- z. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (FAR 52.222-35)
  - aa. Affirmative Action for Workers with Disabilities (FAR 52.222-36)
  - bb. Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (FAR 52.222-37)

Guidance as to which clauses are to be incorporated within construction contracts subject to the Davis-Bacon Act is set forth at FAR 22.407.