

## CHAPTER 7 - ENFORCEMENT PROCEDURE AND REPORTING

7-1. General. A sound enforcement program to assure that contractors are aware of their responsibilities and that laborers and mechanics are properly paid includes: A preconstruction labor relations letter; a preconstruction conference; and an adequate review of the contractor's payroll records and field inspection of his operations. The District Labor Relations Advisor will send a preconstruction labor relations letter to each contractor who is awarded a construction contract. This letter will provide information regarding the labor standards clauses and wage determination requirements of the contract. This letter may also include sample forms and guidance as to their submission.

### 7-2. Preconstruction Conferences.

a. Such conferences are required to be held with contractors to discuss what the Contracting Officer expects of the contractor with respect to construction features, safety, labor relations, and contractor inspection system, and to ascertain how the contractor proposes to comply with the contract requirements. The extent of detailed discussion of labor standards requirements will depend upon the contractor's previous experience and compliance record on government contracts as well as the complexity of the construction at hand. Discussion of the contractor's proposed method of construction may disclose situations and conditions which were not anticipated. This is one of the primary purposes of such conferences, i.e., to the extent possible bring to light matters which need to be discussed and clarified. Chapter 5 contains guidance on specific subjects to be discussed at these conferences. Appendix H, Preconstruction Conference Check List, is suggested as a guide.

b. The District Labor Relations Advisor should participate in such conferences whenever possible to assist field personnel. Contractors should be represented by a principal of the firm, or the project superintendent, together with the principal assistants who will be engaged in hiring and supervision, preparation of payrolls and payment of wages, and similar representatives of all known subcontractors. In order to avoid problems during contract performance, it may be suggested to prime contractors that they consider bringing representatives of their principal subcontractors, if known, to the preconstruction conference. The material presented to the contractor by the preconstruction letter should be emphasized during the conference. This material may be elaborated upon by reference to departmental regulations or those of the Secretary of Labor, and by other instructions contained in this regulation. The conference should also afford the contractor an opportunity

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to discuss such aspects of his labor relations activities as he may desire. Copies of forms, regulations, etc., should be furnished the contractor upon request.

c. The record (minutes) of the conference shall include appropriate coverage of items discussed with regard to labor standards requirements.

7-3. Routine Enforcement Activities. The ACO is responsible for ensuring that the prime contractors submit payrolls in a timely manner. The ACO's staff shall perform all required checking of the contractor's field operations, including the checking of payrolls and reporting any irregularities discovered which require further investigation or action at higher level.

7-4. Quality Assurance Representative's On-the-Site Activities.

a. General. During the course of his other QA duties, the QA Representative will observe that all posters and wage scales are properly displayed, and will familiarize himself with the overall working conditions on the job.

b. Employee Interviews. Perhaps the most effective means of detecting labor standards violations is through the conduct of labor standards interviews. These interviews are essential to the detection of employee misclassification or other common violations. Accordingly, the contract provides that the contractor will permit such interviews during working hours on the job; however, the responsible QA Representative shall, at the start of the work, inform the contractor's representative that he is required to and will conduct interviews during working hours. They should be held at such times and places as to cause the least possible interference with the performance of the employee's job and the other duties of the QA Representative. Interviews shall not be held in the presence of the employer, a supervisor, another employee, or any other person. The employee should be advised that pursuant to the Privacy Act (5 USC 552a) the information being furnished is confidential and that his identity will not be disclosed to the employer without the employee's consent.

c. Frequency and Number of Interviews.

(1) In order to obtain a representative coverage of the work force, interviews of employees working in the various trades (power equipment operators, laborers, carpenters, ironworkers, etc.) should be conducted each week.

(2) The number of interviews during any particular week should be determined by the type of work, turnover of employees, the number of employees working, as well as the

length of time required to perform the contract work. For example, on a contract where the work force is small and stable and all workers have been interviewed within a short period of time, and no labor violations have been found, interviews should be suspended when it is obvious that continued interviews would be repetitive and involve the same workers week after week. This is not to say no further interviews are required in such a situation. To ensure continued compliance with labor provisions, interviews will be resumed and conducted at such intervals as the circumstances on the contract may dictate.

d. Reports of Interviews.

(1) QA Representatives use SF Form 1445<sup>5</sup>, Labor Standards Interview, when conducting interviews. See Appendix I for this form. These interview reports are to be used as a check against the contractor's or subcontractor's payroll for the week; therefore, all interview reports will be attached to the payroll covering the week during which interviews were held. Any irregularities apparent as a result of the interview should be noted and called to the attention of the ACO office for such action as may be appropriate under corrective administrative procedures.

(2) The SF Form 1445 contains some questions that have not been involved on previous employee interview forms. Also, this form is to be signed by the employee. One question pertains to cash payments for fringe benefits required by the posted wage decision. In this regard, some wage decisions do not contain (require) any fringe benefits; some wage decisions contain fringe benefits for some but not all classifications of laborers and mechanics; and some wage decisions contain fringe benefits for all classifications. Thus, the question will not be appropriate in some cases, and it may lead to some misunderstanding on the part of the employee. In those cases where the applicable wage decision does not require any fringe benefits with respect to the class of worker involved, the answer to the question should be "None required" instead of checking yes or no. Regarding the employee's signature, should he decline to sign the forms the interviewer will, as a part of his comments, state the reason given by the employee for declining to sign.

e. Handling Complaints. Complaints received from employees regarding their classification and rates of pay should be brought to the immediate attention of the ACO in order that an investigation may be made. Complaints received by an QA Representative from a steward or union representative should be treated in the same manner. The QA

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<sup>5</sup> A separate format showing the Privacy Act statement applicable to SF 1445 may be reproduced locally and attached to the SF 1445.

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Representative should be prepared to answer questions from employees when they request information as to the applicable contract rate or overtime provision. Under no circumstances should the QA Representative give his opinion as to whether any back wages are due any employee.

f. Whistleblower Protections. Contractor Industrial Relations Representatives should be cognizant of the "whistleblower" protections created by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994, P.L. 103-355. The implementing regulation (FAR 3.903) provides that "Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract." In this regard, upon receipt of a DBA minimum wage rate complaint that includes an allegation of retaliatory discharge, the complainant should be advised of the complaint procedures set forth at FAR 3.904.

g. Examination of Payrolls. QA Representatives shall examine payrolls submitted by the contractor to check information developed through interviews and on-site observations of the activities of the various classes of labor employed. Upon receipt of the contractor's payroll, the QA Representative will record specific payroll statement data on ENG Form 3180, Contractor Payroll Record (Appendix J). The QA Representative will assure himself that the payroll reflects the actual conditions at the work site. The following criteria will apply to the examination of the payroll:

(1) Check to see: that the names and addresses of employees are on the payroll; that they are properly classified and such classifications are descriptive of the type work or equipment involved; that they are paid not less than the contract rate for their classification as well as fringe benefits when required.

(2) Check the hours of work shown as compared to shift-hours or existing work conditions. Also, check for proper overtime hours and rates.

(3) Compare the payroll with the daily logs to see that the payroll reflects the various activities reported on the daily logs for the work week involved.

(4) Check for disproportionate use of laborers, trainees, and apprentices to journeymen, and proof of registration of apprentices and trainees.

(5) Examine the contractor's Statement of Compliance to see that it is complete, that the dates and deductions listed are consistent with those on the payroll, that no

unauthorized deductions are made, and when fringe benefits are required, check the fringe benefits portion of the statement for completeness and proper execution. Upon completion of his examination, the QA Representative will so indicate by his initials and forward the payroll, statements, and interview reports to the ACO Office.

7-5. Corrective Administrative Action on Nonaggravated or Nonwillful Violations. When instances of noncompliance, discrepancies, errors, or omissions are found, the following action shall be taken:

a. General. Payrolls are not in any event to be returned to the contractor to make corrections. The custody and control of any payroll should not be relinquished by the government at any time. Minor corrections may be effected only by the contractor or his authorized representative on the payrolls in the ACO office in the presence of the QA Representative or ACO office personnel, or by the contractor's submission of amended payrolls reflecting such corrections. Corrections made directly on the payrolls should be initialed by the same person who signed the Statement of Compliance submitted with the payroll. Examples of such permissible corrections are:

(1) Correcting a wrong classification or one omitted as distinguished from a real misclassification involving underpayments; correcting dates, computations, and other figures; and such other corrections as are necessary to ensure that the payroll data is correct and complete.

(2) Corrections involving any adjustment of money must be handled by supplemental payroll and statement.

b. Overpayments. Experience has shown that contractor's payrolls occasionally reflect what appears to be an overpayment of wages to an employee. Although the net amount of pay shown for the employee appears to satisfy the contract minimum pay requirements, in some cases the payroll is incorrect on its face. Some examples of the above are: the total hours shown for the week are not supported by the daily hours, thereby raising a question as to the correctness of the daily postings or an error in computing the total; the gross pay shown is more than the total hours shown times the rates of pay which also raises the same question: the net pay is less than the gross less the deductions shown, which raises two further questions: (1) Is the net pay incorrect in itself, or (2) have the deductions been inaccurately reported. The contractor is responsible for submitting a payroll that is both correct and complete, and so long as the payroll is not correct on its face it is not an acceptable payroll. Such discrepancies as are referred to above should not be a matter for speculation by ACO personnel but should be explained by the contractor. The contractor may make such explanation by a note on the payroll or in a

separate writing.

c. Underpayments Involving Overtime Pay. Payrolls reflecting any underpayments involving overtime compensation, regardless of cause, shall be given the required checking at once and dispatched immediately to the District Labor Relations Advisor. The District Labor Advisor will compute the overtime underpayments as well as the CWHSSA liquidated damages and prepare, for signature by the ACO, written instructions to the contractor concerning proposed corrective action and statutory appeals procedures relating to the assessment of liquidated damages.

d. Other Underpayments. At the ACO office level the contractor may be instructed to make restitution of underpayments and submit supplemental payrolls and statements in cases resulting from misclassifications (where there is no disagreement as to the proper classification) or other reasons, all of which are found not to be willful or aggravated. Correction of underpayments may also be handled on the next regular payroll, provided the payroll data clearly identifies the reason for the extra pay as well as the usual computations to support and distinguish the regular pay from such additional pay. In all cases where the contractor is instructed at this level to make restitution payments, the responsible QA Representative will ensure that the corrective action is adequate. In the event the contractor or any subcontractor does not satisfactorily and voluntarily comply with the instructions of ACO personnel, the matter shall be called to the attention of the District Labor Relations Advisor immediately and processed in the manner set forth in paragraph 7-6 of this chapter.

e. Disputes. In cases where there is a misclassification involved and there is disagreement as to the proper classification, the ACO shall not direct any corrective action but rather forward all relevant information including the following to the District Labor Relations Advisor: Name and address of employee; payroll classification and wage rate, dates, and hours worked on current payroll; total hours misclassified; total wages paid; brief description of duties and suggested classification; and contractor's position on the matter. The Labor Advisor will then process the matter as prescribed by 29 CFR 5.13, FAR 22.406-10 and the contractual general provision entitled "Disputes Concerning Labor Standards." Figure 7-1, which follows Chapter 7, outlines the report process.

f. Proof of Effecting Restitution Payments. Regulations require that evidence of restitution payments be obtained and incorporated into the contract files. When the contractor is directed at the project level to make restitution payments such evidence will be obtained. Quality Assurance personnel may require the contractor to prepare payroll receipts to be signed by the employee, or furnish copies of canceled checks. Either

method must be used in all cases where the employee is no longer employed on the jobsite or not available for interview by the QA Representative subsequent to the payment. If the employees are still on the job site, Corps personnel may question the employee concerning same and sign an appropriate statement, either on the supplemental payroll or separate writing, and attach it to the payroll.

7-6. Action on Aggravated or Willful Violations. In the event enforcement activities indicate the contractor or his subcontractor are in aggravated or willful violation of the labor standards provisions of the contract or if the amount of restitution wage payments to one or more employees exceeds \$1000, a special investigation shall be made by the District Labor Relations Advisor. Under these circumstances, the QA Representative should not attempt to conduct any interviews with the contractor or his employees. However, if any employees make inquiries or complaints to any Corps personnel before a full scale investigation is started, they should be advised that an investigation will be made. All such inquiries, complaints, or evidence which an employee may present should be treated as strictly confidential and no attempt should be made to advise them whatsoever as to whether any back wages are due or action to take because of the violations by his employer. Upon completion of the investigation, the District Labor Advisor will forward an administrative report of findings to the Contracting Officer for further disposition of the case as provided by applicable regulations and as outlined in Figure 7-2, which follows Chapter 7.

7-7. Records and Reports.

a. Payroll Record Card. Appendix J is Contractor Payroll Record, ENG Form 3180. This record will be maintained for each contract. When all work on the contract is complete this record will be signed by the Resident Engineer or Area Engineer and attached to the final payroll.

b. Contract Completion. When a contract is nearing completion, the status of payroll submissions and any required corrections should be reviewed in order that any deficiencies may be discovered and appropriate action taken prior to the processing of final payment to the contractor.

7-8. Withholding of Funds from Contractor's Payment Estimates - Administrative Procedures.

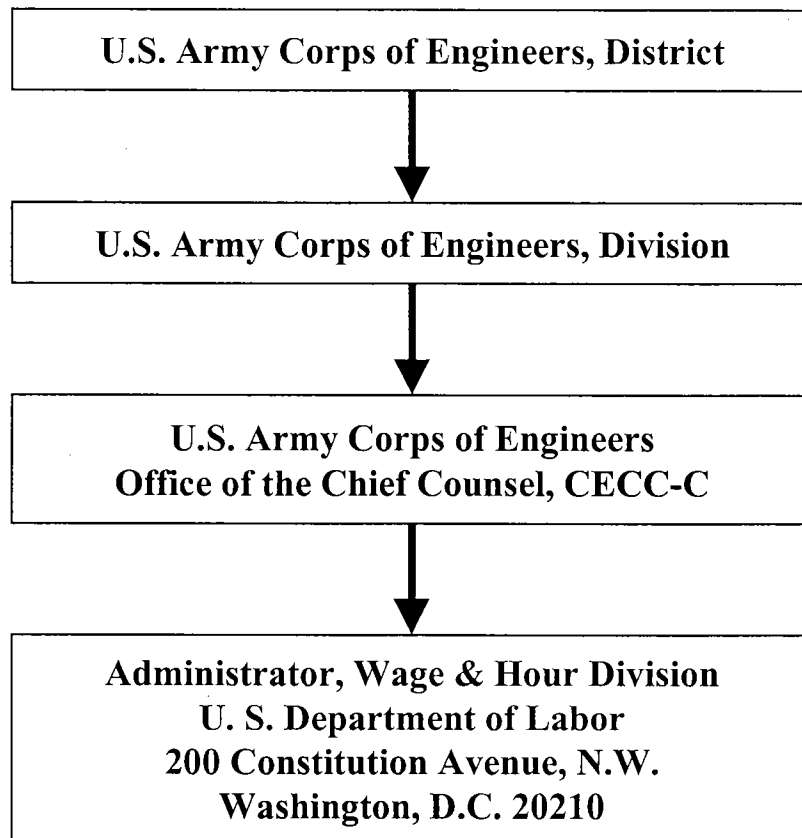
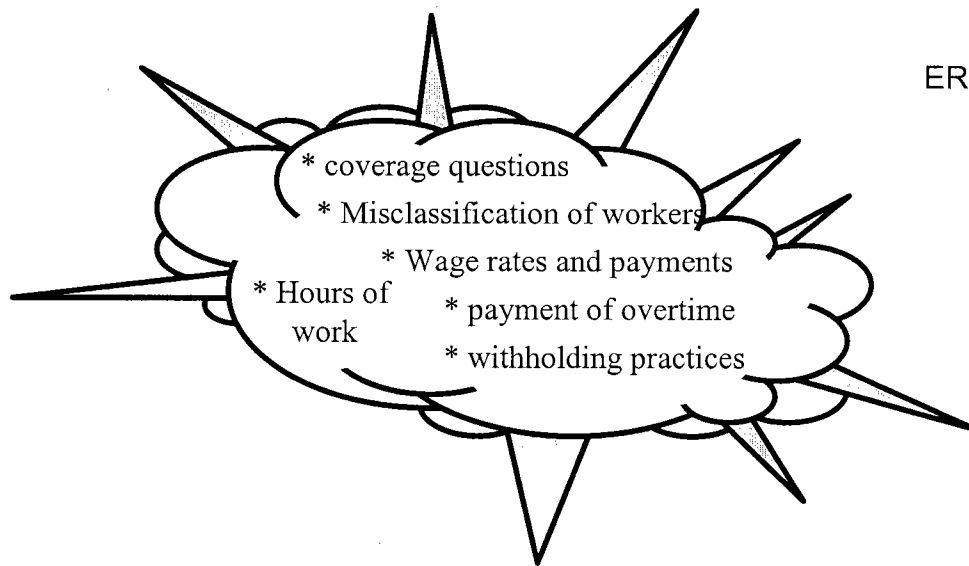
a. FAR 22.406-9 provides that when the Contracting Officer believes a violation exists, he shall withhold from payments due the contractor an amount equal to the estimated underpayments, as well as any estimated liquidated damages due the United

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States under the Contract Work Hours and Safety Standards Act.

b. The Contracting Officer's formal correspondence to the contractor initiates the withholding action by those responsible for preparing payment estimates; therefore, a copy of such correspondence must be furnished the responsible office, and a copy should also be furnished to the appropriate unit of the District Finance and Accounting Office. Whether payment estimates are prepared on ENG Form 93 or a contractor's invoice and receiving report procedure is used, the amounts withheld (for wages and liquidated damages) must be clearly identified on the payment documents (e.g., ENG Form 93, Item 15G with appropriate explanatory notes on reverse thereof). Also, such amounts withheld must be in addition to any other deductions such as those for retained percentage and/or liquidated damages for late performance. No part of the amounts withheld for labor violations is to be released to the contractor until written clearance is received from the Contracting Officer.





Reference: 29 CFR 5.13  
FAR 22.406-10  
DFARS 222.406-103

Figure 7-1. - Processing of administrative matters relating to disputes between contracting officers and contractor concerning labor standards compliance

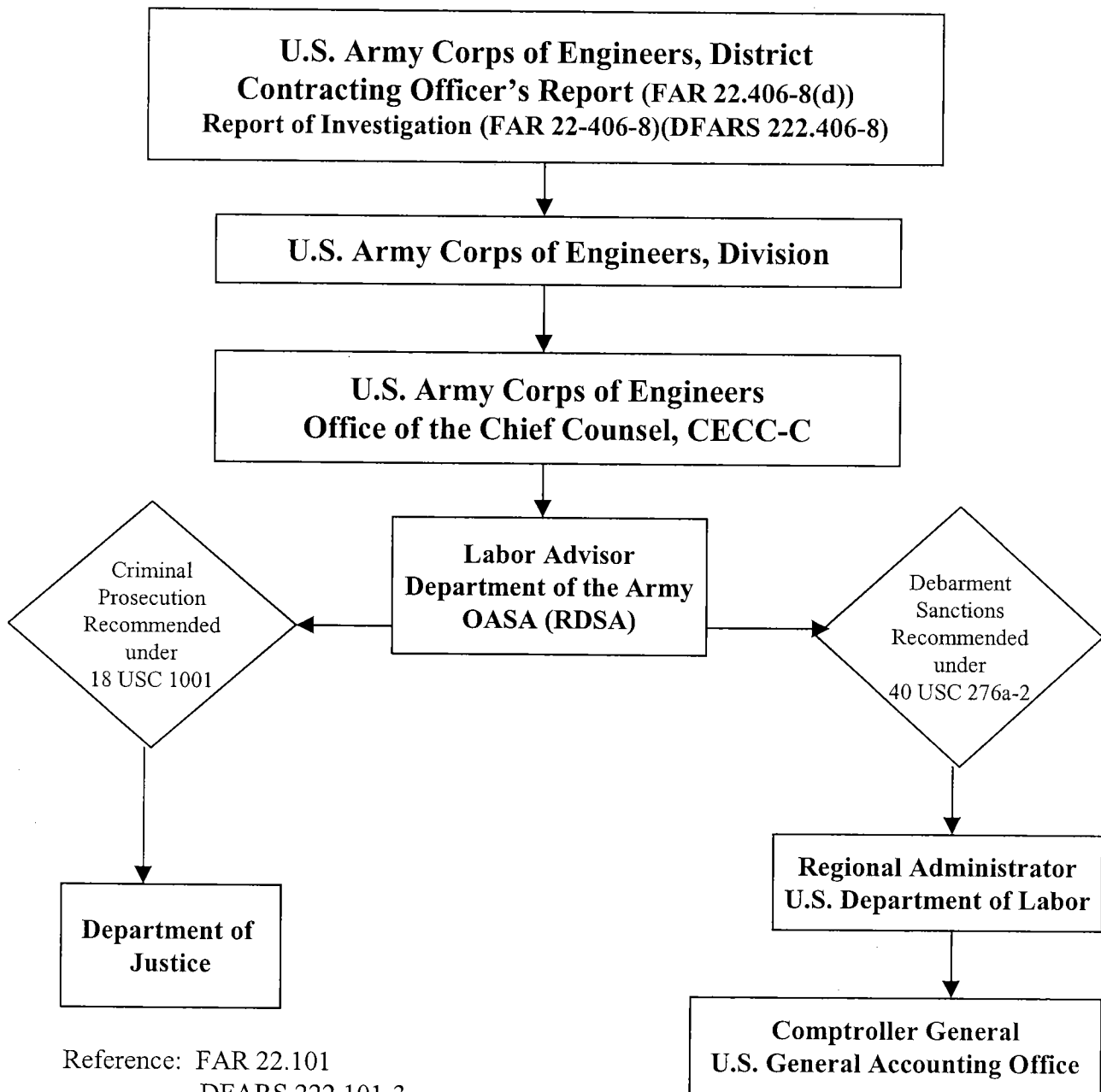


Figure 7-2. Processing of reports relating to Corps of Engineers Investigations of violations of the Davis-Bacon and Related Acts