

Instructions to Contractors on Construction Wage Rate Requirements



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THIS PAMPHLET SUPERSEDES
SWFP 1185-1-1, 01 AUGUST 2000

FORT WORTH DISTRICT
CORPS OF ENGINEERS

Contracting Division, Business Oversight Branch

_____Area Office

U.S. Army Corps of Engineers

ATTN:

Address: _____

City/Zip: _____

I hereby acknowledge receipt of one copy of "Instructions to Contractors on Contract Labor Requirements." I understand that my company will be required to comply with the labor provisions contained in:

Government Contract No.: _____

Name of Contract: _____

Location of Contract: _____

Name of (Contractor/Subcontractor)

Printed Name

Signature and Title

Date

NOTE: A completed receipt is to be attached to, and processed with, the first payroll submitted by the prime contractor and each subcontractor.

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SWFP 1185-1-1

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**INSTRUCTIONS TO CONTRACTORS
ON CONTRACT CERTIFIED PAYROLL AND LABOR
REPORTING REQUIREMENTS**

1. Purpose. The purpose of Appendix A is to advise Contractors about the labor provisions contained in federal construction contracts and to inform them how the contract provisions will be administered and enforced. These instructions do not supersede or revoke any provision or requirement of the contract.

2. Policy. An affirmative labor relations program, in keeping with laws, established policies, and regulatory requirements, will be applied throughout the **Fort Worth District**. Our basic goal is that all Contractor employees at the project work site be classified and paid correctly. Hopefully, compliance can be obtained without violations. If not, **enforcement procedures will be used to correct violations.**

3. Recommendations. It is our desire that any contractor bidding a USACE, Fort Worth District, US Army Corps of Engineers (USACE) contract be aware of and understand the labor provisions of the contract prior to beginning work at the project site. The following is recommended to assist Contractors in understanding the labor provisions and for those Contractors who may not know how these provisions are administered and enforced on federal contracts.

a. Review the labor standards provisions contained in the contract and, by law, incorporated into subcontract agreements at any tier. Many of these contract provisions are reproduced for reference and are attached to this Appendix as *Attachment 1*.

b. Review this instruction pamphlet and acknowledge by signing Appendix A. Appendix A is intended to assist Contractors in understanding and complying with the labor provisions of their contract.

c. Attend Preconstruction Conferences scheduled encourages all subcontractors to attend. Utilize the 3 Phase Inspection System requirement of the contract to clearly understand subcontracted work efforts to ensure labor compliance.

d. The Fort Worth District Contracting Division delegate's authority and responsibility for the administration and enforcement of the labor provisions referred to in this manual. Federal Labor Advisor and the Field Administrative Offices (FAO). The FAO offices are responsible for approving and processing progress payments. The Federal Labor Advisor is located in the Fort Worth District (FWD) Offices of the Corps of Engineers and the offices referred to herein as the FAO are the FWD field office sites,

i.e., FWD lake or construction field offices. Obtain clarification and/or advisement from your FAO for any questions concerning certified payrolls and labor reporting at the preconstruction conference or as questions or problems arise throughout the contract duration.

e. After contract award you will receive documentation concerning the labor provisions of the contract which will indicate the FAO who will be administering and enforcing the labor provisions of the contract. The Contracting Division Contracting Officer with assistance and advisement of the District Federal Labor Advisor has the ultimate responsibility for contract labor compliance and enforcement.

f. Disseminate information and issue instructions for compliance with the contract labor provisions to those employees, of the Prime and all Subcontractors who are responsible for the administration of the certified payroll and labor reporting day-to-day operations.

g. Prime Contractors should furnish each Subcontractor a copy of the contract wage decision(s) and the "Application of Wage Decisions" if more than one wage decision is awarded with the contract. Ensure any modification issued by amendment affecting revision of the contract wage decision(s) is also disseminated. A copy of the Contracting Officer's letters regarding the requirements of the labor provisions. A copy of this instruction pamphlet. Required Government forms as listed herein may be obtained from the Government Printing Office (GPO) or the Department of Labor (DOL) website . Forms such as the EEO Posters (English/Spanish), Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, DD Form 879, Statement of Compliance and WH-347, Contractor Payroll Record (if the contractor chooses to use this form it must comply with The Copeland Act requirements).

4. Labor Standards Provisions. Specific federal labor laws and other regulatory labor requirements are incorporated within federal construction contracts. Basic labor laws apply to Mechanics and Laborers at the site of the work on contracts in excess of \$2,000.00. This means if the prime (or general) contract exceeds \$2,000.00 the labor provisions apply to it as well as to any subcontract at any tier. Specific labor provisions are applicable to contracts in excess of \$10,000.00 and additional provisions apply to contracts in excess of \$500,000.00. Standard labor provisions and the certified payrolls recordkeeping are discussed in the following paragraphs. *Attachment 2.*

a. Mechanics and Laborers. "Mechanics and Laborers" are those who work predominately with their hands or with construction tools and equipment performing part of the work contracted at the project site. Corps of Engineers labor policy is to determine the right classification(s) each employees by the observation and reporting of duties and tasks being performed and tools of the trade being utilized during work performance.

b. Site of the Work. "Site of the work" normally means the actual site of construction but may also include prefabrication or assembly yards, quarries or borrow pits, batch plants, and similar facilities if they are set up for and serve almost exclusively, the particular construction operation. A more complete definition for "site of the work" is included.

5. Construction Wage Rate Requirements (FAR 52.222-6). This Act requires the contracting agency (Contracting Division) to incorporate predetermined employee classifications and minimum wage rates (including fringe benefits) in all federal construction contracts. These classifications and rates are furnished by the Secretary of Labor (DOL) as a wage decision. The Act requires that "Mechanics and Laborers" (any person performing physical labor on the job) be classified to conform to the work performed, and paid at least the minimum hourly rate plus any applicable fringe benefits, determined for the classification in the wage decision. The Construction Wage Rate Requirement and Regulated Regulations requires employees be paid no less than once a week at predetermined hourly rates; therefore, contractors are cautioned about the employment of Mechanics and Laborers on a salary or piece-rate basis and of employees classified as Superintendents or Foremen who actually work more than 20% of their work day performing craft. Reference Federal Acquisition Regulation FAR) 52.222-13.

a. Wage Decisions. Wage decisions are issued by the Employment Standards Administration, Wage and Hour Division (DOL). Wage Decision(s) must be current at the time of bid opening and award. The decision(s) contained in the awarded contract will be the minimum rates enforced for the duration of the contract.

b. Multiple Wage Decisions. Contracts which are subject to more than one wage decision, i.e., Building, Heavy, or Highway Construction, will have an "Application of Wage Decisions" as a part of the wage decision requirements package. The application requires contractors apply the appropriate wage decision(s) and indicate the wage decision(s) to be applied to their payroll records for their portion of the contracted work performed.

c. Posting Wage Decisions. Prime contractors are required to post a copy of the wage decision(s), the Application of Wage Decisions, and any approved additional classifications and rates to the wage decision(s), at the project site in a place easily accessible to all employees. A "Notice of Employees" poster, completed to show the nearest Corps of Engineers office, will be furnished by the prime contractor for posting along with the contract wage decision(s). Most Corps of Engineers contracts require the prime contractor furnish a weatherproof bulletin board for posting this information.

d. Classification of Employees. Employees are to be classified correctly using classifications as determined in the wage decision(s). The classification must include any zone, group, sizing, capacity, designations, etc. "Journeyman", "Operator", "Apprentice", are not complete classifications. However, "Journeyman Plumber",

“Backhoe Operator less 2.5 CY” and “Electrical Apprentice, 5th/65%”, annotates a complete employee classification. Classifications may be coded provided a code sheet is furnished with each payroll record to show the exact and complete craft/trade classification to be applied to employees.

e. Additional Classifications. For any unlisted classification not listed in the wage decision the Prime Contractor must prepare and submit a Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate.

The proposed classification and wage rate (including any prevailing fringe benefits) the wage decision awarded with the contract as well as supporting documentation must be submitted to the Federal Labor Advisor (FLA) or the Administrative Contracting Officer (ACO) at the FAO.

(1) If the FLA, the ACO, the Prime Contractor (and Subcontractor if involved) agree to the classification and rate, the FLA or the ACO will tentatively approve the SF 1444 and forward it to the DOL for final approval action and addition to the contract wage decision.

(2) If the listed parties cannot agree, the request with any substantiating documentation is forwarded to the DOL for final determination. When submitting the SF 1444 it is very important that the Prime Contractor submit only one request per SF 1444. If the Prime Contractor submits more than one classification and rate request per SF 1444, the SF 1444 will be returned to the Prime Contractor without processing.

f. Fringe Benefits. Fringe benefits determined by a wage decision are paid by the Employer. Payroll records must evidence that the fringe benefits have been paid to the employee(s) in cash, or on behalf of the employee(s) into an approved plan, fund, or program. *Attachments 5, 6 and 7.*

(1) If a Contractor participates in a bona fide plan, fund, or program, the fringe benefit payments made directly to the plan, fund, or program and the hourly amount of contributions made must appear in a separate column or location on the payroll record. The name(s) and address(es) of the plan or company to which the employee's fringe benefits are contributed must be annotated on the Statement of Compliance Form (DD Form 879, WH-347 or computer generated form) or the payroll record. Fringe benefits which are set aside and not taxed until used should not be included in the gross pay for tax purposes. The Statement of Compliance Form for fringe benefit payments would reflect fringe benefits were paid to a bona fide plan, fund, or program, Block 4(a).

(2) If a Contractor does not participate in a bona fide fringe benefit plan, fund, or program, the fringe benefit payments are paid in cash and included in gross earnings. Payroll records and the Statement of Compliance Form would reflect that fringe benefits were paid in cash, Block 4(b).

(3) A contractor may have a combination of the above procedures. If so, the payroll records are to show how fringe benefits are paid for each employee – how much is included in the basic hourly rate and the hourly amount paid into approved plans, funds or programs for the employee(s), and providing the name(s) and address(es) of the approved plans, funds, programs, or receivers, Block 4(c) would be checked and the remarks block completed to accurately reflect the fringe benefit payment arrangements.

(4) If a contractor desires credit for paying fringe benefits to a program which has not been approved by the DOL a written request containing full information and factual data will be submitted to the FLA with a copy furnished to the FAO for review. The request must include a description of the fringe benefit, such as health insurance, two-week paid vacations, etc., to whom payments are made and how much is to be contributed reduced to an hourly equivalent. Certification is required to evidence that the payments so made are on a guaranteed basis to a bona fide program for the sole benefit of the employee. Any difference between the fringe benefit credit allowed and the fringe benefits required by the contract wage decision(s) are to be paid in cash to the employee. Payroll records and the Statement of Compliance Forms evidence how the fringe benefit payments are made.

(5) Questionable requests for credit for fringe benefits will not be allowed without approval from the DOL.

(6) Fringe benefit payments apply to all hours of work but are not subject to premium pay (See paragraph 6a regarding overtime law).

(7) Employees should be informed in advance of their employment, and in writing, of a contractor's fringe benefit plan, having the plan fully explained to them.

g. Holiday Pay. Holiday pay applies when the wage decision has a footnote under fringe benefits for "Paid Holidays". This footnote will apply only to the fringe benefits of a specific craft classification.

6. Contract Work Hours and Safety Standards – Overtime Compensation (FAR 52.222-4).

a. This Act specifically states that Contractors and Subcontractors who are contracted for any portion of the contract requiring or involving the employment of Mechanics and Laborers are required, pursuant to the CWHSSA to pay employees one and one-half times their basic rate of pay for all hours over 40 worked on covered contract work in a workweek. If the basic hourly rate has been lowered and the difference paid as fringe benefits, the basic hourly rate on which overtime is computed is the minimum required by the contract wage decision(s) for the classification. Fringe benefits are required to be paid on all overtime hours worked, but are not computed at the time and one-half, rate of pay.

b. When employers violate CHWSSA, they are subject to liquidated damages assessed at the rate of \$10.00 for each calendar day for each employee(s) required or permitted to work in excess of the standard workweek of 40 hours without payment at the overtime rate or at the correct overtime rate.

c. NOTE OF CAUTION: Piece-Rates & Salary. The hourly rate of pay for a Mechanic or Laborer paid on a salary, or piece-rate basis, is established by dividing the gross weekly payment by the hours worked during the work week. The rate so established must meet or exceed the rate contained in the wage decision for the craft classification, including fringe benefits where applicable, to comply with Construction Wage Rate Requirements. If a salaried or piece-rate employee works over 40 hours per week, the employer is in violation of the overtime law and is required to pay an additional one-half the employee's established rate for the workweek for all overtime hours.

7. Apprentices and Trainees (FAR 52.222-9). Classification and rates for Apprentices/Trainees are not included in wage decisions.

a. Apprentices and Trainees will be permitted to work at less than the predetermined rate for the craft they perform when they are employed pursuant to a bona fide Apprenticeship Program, registered with the Department of Labor, Bureau of Apprenticeship and Training (DOL) or with a State Apprenticeship Agency recognized by Department Of Labor. Written evidence (not over 90 days old) from the Department of Labor or a State Apprenticeship agency and certification that the Apprentice/Trainee is registered or enrolled must be submitted with the first payroll record annotating the Apprentice/Trainee and include the registration, rate, and ratio of the Apprentice/Trainee. A letter from the Union or Identification Cards are not evidence of employee registration. *Attachment 8.*

b. Certification of Wage Rate. Basic hourly wage rates for Apprentices/Trainees are usually a percentage (%) of the journeyman's basic hourly wage rate. Fringe benefits for Apprentices/Trainees are the same as for journeyman, except when a fringe benefit is determined in the wage decision as a percentage (%) of the basic rate. In this latter case, the fringe benefit is a percentage (%) of the apprentice's basic hourly rate.

c. Any employee(s) listed on a payroll as (and paid) at an apprentice wage rate who is not registered and for whom written evidence or certification notice has not been received shall be considered underpaid and paid the applicable journeyman wage rate for the classification of work actually performed.

d. Certification as to the permissible ratio of Apprentices/Trainees to Journeyman are established by the DOL at the time of registration into the Apprenticeship program. The permissible ratio applies to each contract, on a daily basis. If the ratio is certified to be 1 Apprentice to 3 Journeymen, our policy is to permit 1 Apprentice to 1 Journeyman; 1 Apprentice to 2 Journeymen; 1 Apprentice to 3 Journeymen; with the second Apprentice allowed for the 4th Journeyman.

(1) The allowable ratio of Apprentices to Journeymen on the project site in any craft/trade shall not exceed the ratio permitted the Contractor for the entire work force under the Bureau of Apprenticeship and Training program.

(2) The step rate, or percentage of progression, is shown on payroll records as part of the employee(s) classification, i.e., “Electrical Apprentice, 5th/65%”. If the period and progression are not shown on the Bureau of Apprenticeship and Training certification from the DOL or a state agency, the contractor must provide the employee progression.

8. Compliance with Copeland Act Requirements (FAR 52.222-10). The Copeland (Anti-Kickback) Act requires that **only authorized deductions** be taken from an employee’s pay, i.e., Federal Income Tax, Social Security Tax, State Withholding Tax, etc. These deductions are to be clearly identified and itemized on the payroll records and also described in the center portion of the DD Form 879 or WH- 347 Statement of Compliance Form.

a. It is not necessary to include the amount of each deduction on the Statement of Compliance Form. The amount shall be shown on the payroll record.

If there is insufficient space on the Statement of Compliance to list each deduction the contractor must provide an attachment listing each deduction and the dollar amount of each deduction per work hour.

b. Standard and customary deductions are permissible without approval from the DOL. Some **Non-Copeland deductions** require prior written authorization from the employee(s). The authorization, dated and original signed by the employee, is to be attached to the first payroll record showing the deduction being made. The authorization should state the exact reason for the deduction and the amount and frequency of the deduction. Deductions that are not “standard” or those which appear to be questionable will require approval from the DOL. An extract from the Code of Federal Regulations, Title 29 – Labor, Part 3, concerning deduction, is attached for guidance. *Attachment 9.*

c. Taxes: FICA, Medicare, State, and Federal – According to the Simplified Tax and Wage Reporting System (linked to the DOL, IRS, SSA, and SBA websites), it is the responsibility of the Employer to ensure all applicable withholdings for federal income tax and the employee’s share of Social Security and Medicare taxes are deducted from earnings.

9. Payrolls and Basic Records (FAR 52.222-8). Payrolls and Basic Labor Records must be maintained by the Prime Contractor during the course of the work and preserved for a period of four (4) years after contract completion for all Mechanics and Laborers working on the site of work. Each payroll record must provide the employees first/last name and list 4 digits of the employee’s social security number. The payroll

record must list the employees' correct craft/trade classification, hourly rate of pay, daily and weekly hours worked, identifiable deductions ("Other", "Miscellaneous" or "Voluntary" are not acceptable) and the gross and net wages paid for the week.

These records contain, as a minimum, the labor requirements set forth in the contract. The payroll records are to be submitted weekly, within seven (7) days after the work is performed, to the FAQ Field Office. Prime Contractors are responsible for ensuring their Subcontractors furnish a signed Statement of Compliance and payroll record within the seven day period. *Attachments 10 and 11.*

The Prime Contractor is required to maintain payroll records three (3) years after the completion of the project and make available upon request any employee's name, address (including city and zip) and employee's social security number for all Laborers and Mechanics employed under the contract.

a. The payroll record is at the option of the Contractor. Each payroll record must contain the name and address of the Contractor/Subcontractor, the title of the project, The Government contract number (not subcontract number) the associated Task Order Number (if applicable), the location and the applicable wage decision number for the work performed.

b. The beginning and ending dates of the weekly period covered by the payroll are to be shown. This is always a seven (7) day period since employees must be paid no less often than once a week.

c. The payrolls shall be numbered consecutively, one number for each week of work, commencing with the first week of work and continuing until completion. The payroll covering the last week of work at the project site is to be numbered and marked "**Final**". (See Payroll Statements, paragraph 11(b)(1), for weeks when no work is performed.)

d. Craft/trade classifications must be as listed in the wage decision or as approved by additional classification and rate procedures (Standard Form 1444). If groups, zones, or equipment sizes are listed on the wage decision(s) they are part of the craft classification and must be annotated on the payroll record.

e. When a contract contains multiple wage decisions the decision used for the payroll period is to be shown for the entire payroll or for specific individuals for the dates of work performed. Compliance will be checked against the highest rate noted for the craft/trade from all contract wage decisions if the applicable wage decision number to be applied is not shown on the payroll record.

f. Daily and weekly hours of work are to be shown for anyone working at the project site as a "Mechanic" or "Laborer".

g. Any travel time is to be shown as a separate entry on the payroll records and identified as such.

Home to Work Travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time. (Not compensable) Travel That is all in a Day's Work: Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked. Construction workers who commute directly from their home to a job site aren't entitled to travel pay. (Work Time Compensable)

Employees would not be paid for traveling from their home to the "meet up location" as that would be considered the employee's normal daily commute. However, the company's "meet up" location would be considered the first "job site" of the day and IAW DOL regulatory if an employee leaves a job site and continues to another one, that is "all in a day's work" and the employee must be paid for that travel time.

h. The hourly rate of pay must be shown for all employees performing work on the project. NOTE: If an individuals' workweek requires multiple wage decision use through the work week, separation into the craft classifications and hourly rates under which the employee works, will be shown on payroll records. Cash fringe benefits may be included in the basic hourly wage rate, or shown separately. (See Paragraph 5f).

i. Payroll record employee deductions are itemized to eliminate any questions as to how much is being deducted for what reason. A payroll record **showing a deduction not properly identified, must be corrected**. It is prohibited on any Fort Worth District issued contract to show deductions on the payroll report as "**Voluntary**", "**Miscellaneous**", or "**Other**".

When employees work on more than one Corps of Engineers contract in a work week, deductions may be consolidated on one payroll, as long as the hours given on the payroll, rate of pay, and gross amount paid are shown to reflect hours worked and gross amount paid for the contract for which the payroll is furnished. Total gross paid each employee for the workweek must be shown before the consolidated deductions are shown. Reference to a master payroll, without furnishing a copy of the master payroll, is prohibited.

NOTE: Form WH-347 is an acceptable combination Payroll and Statement of Compliance Form and may be purchased from the Government Printing Office or can be downloaded from the Department of Labor website at <http://www.dol.gov/whd/forms/wh347instr.htm> .

10. Payrolls and Basic Records – Delivery/Task Order Contracts, Indefinite Delivery Quantity (IDIQ's), MATOC (Multiple Award Task Order Contracts), SATOC (Single Award Task Order Contract), Job Order Contracts (JOC), Time and Materials (T&M).

For “D” type construction contracts each delivery/task order issued against the base contract is to be treated as an individual or “mini” contract. Each Task Order issued will have a sequential number assigned for each Task Order.

Each payroll record submitted must include the Government Contract Number and the Task Order Number for each payroll record, the Contractor's and/or Subcontractor's name and address, the payroll number, the week beginning/ending dates, the project and location and the wage decision number awarded with the Task Order issued for work performance. Payroll records for each Task Order will be numbered sequentially beginning with Number 1 and upon completion of the work for the delivery/task order, the notation **Final** placed on the last payroll record.

11. Statements of Compliance for Payroll Records.

a. A Statement of Compliance Form is required for each weekly payroll record report. Each payroll report submitted must be accompanied by a “Statement of Compliance”, signed (with original signature) by the contractor and/or subcontractor (whether original, corrected, supplemental or revised). Acceptable forms are:

(1) Statements of Compliance, DD Form 879 which can be accessed at the following website <http://www.dtic.mil/whs/directives/infomgt/forms/efoms/dd0879.pdf>. *Attachments 5 and 6 .*

(2) Statement on reverse side of WH-347, Contractor Payroll Records may be accessed at the following website <http://www.dol.gov/whd/forms/wh347instr.htm>. *Attachment 10.*

(3) The contractor's own combined Payroll Record and Statement of Compliance Form, are acceptable, provided the Payroll Record and the Statement of Compliance produced contains the exact language of the DD Form 879 WH Form 347 and the following statement is added: **“The language of this statement is exactly the language of [DD Form 879 or WH Form347]”**.

b. Preparation of the Statement of Compliance. Statements of Compliance must represent a weekly (7-day) period, and are numbered consecutively for each week work is performed on the contract, commencing with the first work week and continuing until the project site work is completed. The last work week statement is marked **Final**.

(1) If the payrolls contain discrepancies in dates from one payroll submission to another the Prime Contractor may be required to send clarification to the FAO explaining the discrepancy of the time periods in question. Although it is not required it

may be left to the Contractors' discretion to require or submit "No-Work" or "Negative" statements on payrolls to facilitate good record keeping in chronological progression of the labor performance of the contract.

(2) Attention should be given to the completion of the spaces provided to "describe" deductions. This is required by the Copeland (Anti-Kickback) Act, even though the attached payroll records may be self-explanatory. (See Paragraph 8a-b.)

(3) Attention should also be given to completion the spaces for fringe benefit payments. If both, "cash" and "fund" payments are applicable, explanations or notations are necessary. Complete the "exceptions" or "remarks" blocks to show clearly how, and to what, plans, funds, or programs you are paying employee fringe benefits and any cash fringe benefits paid to the employee. (See Paragraph 5f.)

12. Corrections of Payrolls. A payroll once submitted **will not be returned** for correction.

a. Administrative errors not involving pay to the employees may be corrected, and initialed by, an authorized representative of the Contractor/Subcontractor at the FAO. Otherwise, corrective action will be supplemental, corrected, revised or subsequent payroll along with an original signed Statement of Compliance. In some instances letters of corrective action will be accepted to ensure compliance with the labor provisions of the contract.

b. A corrected or supplemental payroll is accompanied by a corrected, revised or supplemental signed Statement of Compliance Form identified as "Corrected" , "Revised" or "Supplemental".

c. If corrections are made by subsequent, corrected or revised payroll, the hours and dates for corrected payments are shown as a separate entry on the payroll making the corrections.

d. **Employee Restitutions.** When underpayments occur and corrective employee restitution action is required, evidence of payment is furnished with the corrected or revised payroll records. Acceptable evidence would be an acknowledgement for the gross and net amount of restitution, dated and signed original by the employee, or a copy of the front and back of an endorsed, processed check identified to correct the underpayment. SWF 1275-J Employee's Restitution Receipt. *Attachments 13 and 14.*

e. If an employee cannot be located to affect restitution the contractor must furnish evidence of his efforts to locate the employee. This evidence and a check made payable to the DOL along with corrected or revised payroll records, letters and a Memorandum (that includes a statement of events) along with the employees name,

complete address and social security number made payable to the US DOL WHD and submitted to the FLA for the gross amount due. The FLA will process the restitution for the employee(s) to the DOL for DOL disposition/disbursement of funds. *Attachments 15 and 16.*

13. Subcontracting Labor Standards (FAR 52.222-11). Several contract provisions apply specifically to subcontracting and requires contractors include the labor provisions in all subcontract agreements at any tier. A completed Standard Form (SF) 1413, Statement and Acknowledgement is to be furnished within fourteen (14) days of any subcontract award by the Prime Contractor to the FAO. This form must be submitted for every subcontractor at every tier. First-tier subcontractors are responsible for reporting 2nd-tier subcontractors to the Prime contractor, etc. The Prime Contractor “states” what portion of the contract work is subcontracted and to whom. The last subcontractor involved who will actually perform that portion of the contract work, “acknowledges” the labor provisions.

a. Standard Form (SF) 1413, Statement and Acknowledgement (see Page 85) of this pamphlet. Specific requirements are as follows:

(1) The original form is completed, signed and submitted to the FAO within fourteen days after award of each subcontract.

(2) Prime Contractors are to complete the upper portion of the SF 1413 and sign the original in the middle right portion. Blocks 1 through 11. Blocks 10 and 11 are required to be completed and signed by an **authorized representative** of the Prime Contractor for any Subcontractor performing work on the project.

(3) The last-tier subcontractor involved completes and signs the lower portion of the SF 1413, Statement and Acknowledgement Form. Intermediate subcontractors are accounted for, but they do not sign the form. Blocks 5, 14, 15, and 16 must be completed, signed original and submitted for any subcontractor at any tier performing work on this project. Block 15 must be signed by an **authorized representative** of the subcontractor.

If someone other than the Owner/President signs the SF 1413 as a representative for the Prime (Blocks 9 through 11) and the Subcontractor (Blocks 14 through 16) the contractor must provide a letter of authorization signed original to the Administrative Contracting Officer, FWD Field Office for any person that signs the awarded Government contract.

(4) An exact and complete description of the subcontracted work is to be shown to eliminate questions on work performed at the project site and to preclude erroneous submission of this form for suppliers. Block 6.

NOTE: Technical Specifications Section or Title of Contract identification is not acceptable and may not be used in lieu of an actual description of work in Block 16. Contractor must provide detail description of work.

b. Work performed by an unacknowledged subcontractor may not be included in the contractor's request for **partial/progress payment** until the SF 1413 is submitted in a satisfactory manner.

c. Payrolls are required for all subcontractors who perform Construction Wage Rate Requirements work at the project site. Subcontractor payrolls must be processed through, and reviewed, for compliance by the Prime contractor **prior** to that records submission to the FAO. The ultimate responsibility for contractual compliance with the labor provisions rests with the Prime Contractor.

d. If a subcontract is awarded to a firm which does not perform "Mechanic" or "Laborer" type work at the project site the Prime contractor shall so notify the FAO by letter.

e. The Contractor shall maintain a copy of all subcontractors' proof of required insurance, Accord Forms, and shall provide a copy to the Administrative Contracting Officer at the FWD Field Office.

14. Employee Leasing Firms. To determine whether a company which "leases" employees to the Prime or the Subcontractor(s) is considered a bona fide Subcontractor, the following guidance is provided:

a. In those instances where the employee leasing firm does the hiring of the construction employees and carries these employees on its payroll, the following applies: The leasing firm becomes a 2nd-tier Subcontractor and shall submit the SF 1413 sign the certified payrolls, and the Statement of Compliance Form. This is the case where the employees are hired by the leasing firm and are sent to the construction contractor(s) to perform construction work as instructed at the project site – but remain employees of the leasing firm and are paid by the leasing firm.

b. In those instances where the Contractor or Subcontractor hires a firm to do the accounting portion of its business, including issuing paychecks to the Contractor's employee(s), the following applies:

If the Contractor has hired the employees and is the party responsible for informing the leasing firm as to what amount to pay these employees, then the Contractor's authorized representative must sign the Statement of Compliance Form for each payroll. The payrolls may be signed by the leasing firm, but a Statement of Compliance Form, for each payroll submitted, signed by the Contractor, is still required.

Under these circumstances, the leasing firm is not considered a 2nd tier Subcontractor and is not required to furnish the SF 1413.

15. Withholding of Funds (FAR 52.222-7). This provision gives the Contracting Officer authority to withhold funds from Prime Contractor accrued earnings to ensure payment to employees or to cover liquidated damages when violations of the labor provisions have occurred or when there is reason to believe that violations have occurred. Withholdings can be accomplished under the contract on which the violations have occurred or from any other Government contract on which the Prime Contractor is the same.

a. Employees cannot be considered paid until a copy of the payroll record evidencing adequate payment is furnished in an acceptable manner. If a company performs work at the project site and a copy of the payroll showing this work has not been furnished, it shall be assumed that the employees have not been paid, and an estimated amount to cover the employees' earnings will be withheld.

b. A penalty of \$10.00 per day may be assessed as liquidated damages for each day an employee is not paid proper overtime compensation.

c. In cases of misclassifications, underpayments, or unauthorized (unidentified), deductions, sufficient funds will be retained from monies due the Prime Contractor, or all payments suspended, until violations cease and correct payment or supporting document is evidenced.

d. It is the Fort Worth District, Corps of Engineers labor policy that final contract payments will not be released until the contracting agency, Contracting Division, Federal Labor Advisor, Government Field Office Representative or Administrative Contracting Officer) certifies that all contractual labor provisions were in compliance and met.

e. Department of Labor (DOL) Disbursement of Withheld Funds with respect to Construction Wage Rate Requirements. When appropriate the Wage & Hour Division (WHD) will send a written request to the contracting agency to transfer withheld funds to WHD. The procedures here also apply to the processing of funds in cases in which a contractor authorizes the contracting agency to apply contract funds to back wages due covered workers. Paper check deposits should include the name of the contractor and the contract number(s) for the contract(s) on which the work performed on the check or a separate letter transmitting the check, made payable to Wage and Hour Division (WHD).

16. Compliance with Construction Wage Rate Requirements (FAR 52.222-13) the rulings and interpretations of the DOL, as published in 29 Code of Federal Regulations (CFR), Parts 1, 3, and 5, are applicable to the Prime Contractor, as well as all subcontractors at any tier.

17. Certification Eligibility (FAR 52.222-15) the Prime Contractor must certify that neither the Prime Contractor nor any person or firm having an interest in the Contractor's firm is ineligible to be awarded Government contracts and that none of the contract work will be subcontracted to such a person or firm regardless of the tier of subcontracting.

18. Disputes Concerning Labor Standards Clause (FAR 52.222-14) any disagreement between the Prime Contractor or any Subcontractors and the Contracting Agency DOL which concerns the labor provisions, will be processed under this clause, and not under the contracts general "Disputes" clause. *Attachment 16.*

19. Contract Termination/Debarment (FAR 52.222.12) a contract may be terminated and a Prime Contractor or Subcontractor may be debarred for breach of any of the contract labor provisions.

20. Socio-Economic Provisions. Listed below are several socio-economic contract clauses, monitored either by the Fort Worth District, Corps of Engineers, Small Business and Economic Utilization Advisor, Contracting Division, telephone (817) 886-1382, or by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 525 Griffin Street, Room 840, Dallas, Texas 75202, telephone (214) 767-2911. Some of the clauses pertain only to specific contracts. Information or answers to questions concerning these provisions should be directed as follows:

a. Utilization of Small Business Concerns and Small Disadvantaged Business Concerns – Contracting Division.

b. Small Business and Small Disadvantaged Business Subcontracting Plan – Contracting Division.

c. Utilization of Women-Owned Small Businesses – Contracting Division.

d. Equal Opportunity – OFCCP, DOL.

Affirmative Action Compliance Requirements for Construction – OFCCP, DOL.

f. Affirmative Action for Special Disabled and Vietnam Era Veterans - OFCCP, DOL.

g. Affirmative Action for Handicapped Workers – OFCCP, DOL.

21. Related Provisions and Requirements. Other laws, regulations, policies, and requirements that relate to the basic labor provisions of the contracts. Those that have raised questions or caused problems in the past are noted and discussed for information and guidance.

a. Labor Disputes. Threatened or actual work stoppages, strikes, labor disputes, and related labor controversies that affect the construction progress in any way will be reported, Federal Labor Advisor, the ACO, and the FAO.

(1) Contractors are obligated to take necessary action to resolve disputes which affect the progress of construction at the project site.

(2) Picketing is not permitted on Government installations. Installation commanders are responsible for all activities at an installation. If picketing occurs at an installation, the installation commander may establish controlled entrances. If controlled entrances are established, contractors are expected to comply with installation directives on the use of these entrances.

b. Representatives of Labor Organizations. Representatives of labor organizations are normally permitted to visit construction sites, provided clearance is obtained. Installation commanders cannot permit entry of certain persons to some construction areas.

c. Representatives of the Department of Labor (DOL). Representatives of the Department of Labor (DOL). Our contracts provide that representatives of the DOL may interview employees and examine Contractor records. This is usually necessary when an allegation of violations is being investigated on a coordinated basis with the FAO and FLA.

d. Project Site Interviews (Labor Interviews). Our contracts provide for interviewing Contractor employees at the project site during working hours. FAO Representatives will interview employees at the site during working hours. They will be observing the work, checking payrolls, or otherwise inspecting and checking compliance with the labor provisions of the contract. They will request prompt correction of any violations found.

e. Working Owners. An owner of a bona fide company performing "Mechanic" or "Laborer" work at the project site is reported by payroll record procedure as any other mechanic or laborer, except that the amount of payment is not shown, only hours worked on the contract must be shown. A Standard Form (SF) 1413, Statement and Acknowledgement form is required to be submitted. Certified payroll reports are required to be submitted the payroll records must include classification and daily hours of work shown with a notation, "Owner", or other applicable title, in lieu of wage rate and payment. An "Owner", "Co-owner", or "Partner" must own at least (20) percent of the company in order to be exempt from the labor provisions. It is critical that business owners correctly determine whether individuals providing services are employees or independent contractors. If an individual files a 1099 that does not of itself make that individual an "independent contractor".

f. 1099 Workers. Only contractors/subcontractors with bona fide state/federal licensing, insurance, registration, VIN number, etc., are 1099 business owners. The Prime Contractor must maintain a record of the subcontractors' company Federal Tax ID number and a copy of the subcontractors business licensing/insurance in the contract files. The Prime Contractor is responsible for ensuring all "self-employed" subcontractors are bona fide business owners. The business 1099 requires submission of the SF 1413 and Appendix A SWFP 1185-1-1 Acknowledgement and certified payroll records with the "Owner" so classified.

All other 1099's must be carried on a certified payroll record with the craft/trade and rate per hour/gross wages. A notation of "1099" should be provided on the certified payroll record form to distinguish the craft/trade.

Bona Fide Business Owners. A bona fide owner contractor who also performs construction work is exempt from reporting their wage rates but all employees ARE subject to the Construction Wage Requirements. Weekly certified payroll records must be submitted listing the Owner name, work classification/trade as "Owner" and hours worked, but may omit the wage rate for the Owner only. All employees performing construction work must be listed by name, work/trade classification, hours worked and wage rate. Per 29 CFR 541.102, Bona Fide Business Owners shall be actively engaged in management activities of the Business/Company, including, but not limited to: interviewing, selecting training, and disciplining employees; setting and adjusting employees' rate of pay and work hours; directing work of employees; maintaining production or sales records for use in supervision or control; appraising employee's productivity for purpose of recommending promotions or other changes in status; handling complaints and grievances; planning and apportioning work; determining techniques or type of materials, supplies, machinery, equipment or tools to be used; determining merchandise to be bought, stocked and sold; controlling flow and distribution of materials or merchandise and supplies; providing for safety and security of employees or the property; planning and controlling budget; and monitoring or implementing legal compliance measures. Staffing levels must equal the equivalent of two full time employees throughout the year.

Sole Proprietor. A Sole Proprietor Contractor must provide copy of the company Federal Tax ID and copy of the business license to confirm their business status with respect to the Construction Wage Rate Requirements reporting. A copy of the company liability insurance coverage is acceptable if a business license is not available. Sole proprietor owners must list themselves on the certified payroll with work/trade classifications as "Owner", and include hours worked, but do not need to report a wage rate. The determining factor for the DOL takes into consideration is that the Sole Proprietor be set up as Incorporated or LLC so the money is directed to some other entity apart from themselves. The objective is to make the distinction between sole proprietor and an independent contractor.

Independent Contractor (1099 relationship). Workers classified as Independent Contractors or “1099 workers” are subject to the Construction Wage Rate Requirements. Independent Contractors must be paid corresponding CONSTRUCTION WAGE RATE REQUIREMENTS wages and reported on the weekly certified labor records submitted by the contracting party.

People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax. If you are an independent contractor, you are self-employed. To find out what your tax obligations are, visit the [Self-Employed Tax Center](#). You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor and your earnings are generally not subject to [Self-Employment Tax](#). However, your earnings as an employee may be subject to FICA (Social Security tax and Medicare) and income tax withholding. For more information on determining whether you are an independent contractor or an employee, refer to the section on [Independent Contractors or Employees](#).

g. Owner-Operators (of Hauling Equipment). Bona Fide “Owner-Operators” of hauling equipment (mainly dump trucks) are exempt from most labor provisions. An (SF) 1413, Statement and Acknowledgement Form, is required to be submitted. The Contractor paying the owner-operators may report the Owner-Operators on his payroll records, giving their name, address, social security number (required by FAR 52.222-8) and craft/trade classification, with certification that they are Owner-Operators. Hours of work and amount of pay are not required.

h. Rental Equipment with Operator. When contractors rent equipment with an operator, the operator is paid at least the minimum rate required by the contract for the equipment operated. A Standard Form (SF) 1413 is required to be submitted along with the payroll records of the contractor renting the equipment with the operator and would show the craft/trade classification, hours of work, and actual payments. The difference between the minimum rate required for the operator and the total paid for rent of the equipment (with an operator) must be a fair and reasonable rental rate for the equipment. The operator must receive at least the minimum hourly rate required by the contract wage decision for the classification of work performed.

i. Foremen, Superintendents, & Quality Control Personnel. Foremen and Superintendents who perform “Mechanic” or “Laborer” duties more than 20 percent of their time are subject to the labor provisions. For the time of their work, they are to be craft/trade classified for the work they perform as any other “Mechanic” or “Laborer”, and paid no less than the contract rate for that craft classification, including premium pay for any overtime worked. Supervisory, QC, or Administrative Personnel (only) are not covered by the DBRA and as such are not required to be reported on payrolls.

j. Employment of Undocumented Workers (Illegal Aliens). Our contracts do not have provisions to prevent employment of undocumented workers except in restricted areas where employee clearances are required. The labor provisions will be enforced for undocumented workers as for any other Mechanic or Laborer. In the event these workers are picked up at the project site by Immigration authorities, contractors are to assure that these workers are paid in full for any amounts due them for work performed under the contract.

k. Fair Labor Standards Act. Enforcement of the Fair Labor Standards Act (including the Child Labor Laws) is assigned to DOL. All inquiries about the Fair Labor Standards Act in projects in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas should be made to the Regional Administrator for Wage-Hour, Employment Standards Administration: U.S. Department of Labor (ESA) Wage and Hour Division, 1701 E Lamar Boulevard, Suite 270, Arlington, Texas 76006-7303 or visit the website at www.wagehour.dol.gov. The Regional Director of DOL has numerous representatives throughout the 5-state area.

The FAO is responsible for controlling the employment of minors because of the safety factor involved in construction. The basic guidelines are:

(1) A person under 18 years of age is not permitted to work on “hazardous” construction. Any question on the interpretation of “hazardous” should be referred to the Fort Worth District Safety Officer, the FAO or the DOL – Wage-Hour Division.

(2) Under the Fair Labor Standards Act (FLSA), Child Labor, 14 and 15-year old minors are prohibited from working on construction projects. This includes the prohibition of any power equipment machinery or “repair” projects. Employers may be subject to a civil monetary penalty of up to \$10,000 for each employer who is the subject of a child labor violation.

l. Convict Labor. This clause prohibits the employment of persons undergoing sentences of imprisonment at hard labor imposed by state or municipal criminal courts. The requirement does not prohibit the employment of persons on parole or probation, or of persons who have been pardoned or who have served their terms.

m. Subpart 4.5—Electronic Commerce in Contracting. This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal

acquisition as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act ([41 U.S.C. 426](#)).

Policy. (a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., “copy,” “document,” “page,” “printed,” “sealed envelope,” and “stamped”) shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (e.g., transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by Section 30 of the OFPP Act ([41 U.S.C. 426](#)), the head of each agency, after consulting with the Administrator of OFPP, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures;

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Government wide point of entry and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the agency head shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

(S-102) CONTRACTOR SUPPLY and USE OF ELECTRONIC SOFTWARE FOR PROCESSING CONSTRUCTION WAGE RATE REQUIREMENTS CERTIFIED PAYROLLS (April 2011)

The Contractor is encouraged to use a commercially-available electronic system to process and submit certified payrolls electronically to the Government. The requirements for preparing, processing and providing certified payrolls for labor reporting/recordkeeping are established by the Construction Wage Rate Requirements (CONSTRUCTION WAGE RATE REQUIREMENTS) as stated in FAR 52.222-8, PAYROLLS AND BASIC RECORDS and FAR 52.222-13, COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED ACT REGULATIONS

If the Contractor elects to use an electronic Construction Wage Rate Requirements payroll processing system then the Contractor shall be responsible for obtaining and providing for all access, licenses, and other services required to provide for receipt, processing, certifying, electronically transmitting to the Government, and storing weekly payrolls and other data required for the contractor to comply with Construction Wage Rate Requirements and Related Acts regulations. When the contractor uses an electronic Construction Wage Rate Requirements payroll system, the electronic payroll service shall be used by the contractor to prepare, process, and maintain the relevant payrolls and basic labor records during all work under this construction contract and the electronic payroll service shall be capable of preserving these payrolls and related basic labor records for the required three (3) years after contract completion. If the contractor chooses to use an electronic Construction Wage Rate Requirements payroll system then the contractor shall obtain and provide complete electronic system access to the Government as required for Construction Wage Rate Requirements compliance over the duration of this construction contract. The access shall include electronic review/report access by the Government contract administration office to the electronic payroll processing system used by the contractor.

The contractor's provision and use of an electronic payroll processing system shall meet the following basic functional criteria: Commercially available; compliant with appropriate Construction Wage Rate Requirements certified payroll provisions of the FARs; allows for automated filing of Standard Form (SF) 1413 and Standard Form (SF) 1444; provides electronic import of contractual Construction Wage Rate Requirements Wage Determination(s) as awarded; capable of redaction for Freedom of Information Act (FOIA) request purposes; capable of special reporting requirements to include Apprentice/Journeyman ratios and periods of progression percentages, fringe benefits tracking, standard and non-standard deduction tracking and electronic copies of manually signed documents; the system must provide complete worker tracking of hours regardless of whether one or multiple contracts are worked within the weekly period to ensure overtime status is reached and accounted for within the system; capable of online training to Users; must accommodate the required numbers of employees and subcontractors planned to be employed under the contract; capable of producing an Excel spreadsheet-compatible electronic output of weekly payroll records

(format at <http://www.rmssupport.com/guides.aspx>) for export in an Excel spreadsheet to be imported into the contractor's Quality Control System (QCS) version of Resident Management System (RMS), that in turn shall export payroll data to the Government's Resident Management System (RMS); provides state-of-the-art, demonstrated security of data and data entry rights; ability to produce contractor-certified electronic versions of weekly payroll data; ability to identify erroneous entries and track the data/time of all versions of the certified Construction Wage Rate Requirements payrolls submitted to the government over the life of the contract; provides access by a wide variety of hardware and hardware platforms (computer, PDA, etc.); must be capable of generating a durable record copy, that is, a CD or DVD and PDF file record of data from the system

database at the end of the contract closeout. This durable record copy of data from the electronic Construction Wage Rate Requirements payroll processing system shall be provided to the Government during the contract closeout.

All contractor-incurred costs related to the contractor's provision and use of an electronic payroll processing service shall be included in the contractor's price for the overall work under the contract. The costs for Construction Wage Rate Requirements and Related Acts compliance using electronic payroll processing services shall not be a separately bid/proposed or reimbursed item under this contract.

Contractor Payroll Record (ENG 3180). The Contractor shall be required to log payrolls for all their own employees and all subcontractors utilizing the ENG Form 3180. Each subcontractor, at any tier, will require an individual ENG 3180 for their certified payroll records. The Contractor shall maintain the ENG 3180's, with all certified payrolls, on site and available for review by the Government. ENG 3180's shall be updated weekly as payrolls are submitted. After making copies for their files, the Contractor is required to submit the originals of each week's payrolls to the Government. Before final payment the Contractor shall provide all completed ENG 3180's to the Government.

22. Conclusion.

a. It is the contracting agency, the Fort Worth District Contracting Division, FLA (Federal Labor Advisor) or the designated FAO (Field Area Office) to instruct and advise contractors about the labor provisions and request compliance rather than resort to time-consuming investigations, withholding of funds, penalties, debarment termination, or prosecution.

b. The Fort Worth District Contracting Division expends a lot of time and effort to include current labor provisions in advertised contracts for "fair bidding". We expect contractors to bid our contracts with the intention of **complying with the labor provisions**. Any questions you may have with regard to "fair bidding" and labor should be directed to the Fort Worth District FLA (Federal Labor Advisor).

c. **Investigations** (Internal or DOL) reports are required for willful or major violations of the labor provisions. A copy of a portion of the regulations which Contracting Officers must follow in preparing these investigation reports is attached to point out that prevention of violations can save the contractor time, money, and reputation. *Attachment 17.*

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Federal Acquisition Regulation (FAR) CLAUSES

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52.203-7 Anti-Kickback Procedures.

As prescribed in [3.502-3](#), insert the following clause:

ANTI-KICKBACK PROCEDURES (OCT 2010)

(a) Definitions.

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contractor a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 ([41 U.S.C. 51-58](#)) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision

(c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision

(c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph

(c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

Title 18, U.S.C. Sec. 874. Kickbacks from public works employees Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution,

completion or repair of any public building, public work, or building or work 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, shall be fined under this title or imprisoned not more than five years, or both.

Title 40, U.S.C. Sec. 3145. Regulations governing contractors and subcontractors (a) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

52.219-8 Utilization of Small Business Concerns

As prescribed in 19.708(a), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS (JUL 2013)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. “Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans 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 service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Dynamic Small Business Search database maintained by the Small Business Administration, or

It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically

Disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“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.

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

(1) 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

(2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

52.219-9 Small Business Subcontracting Plan

As prescribed in 19.708(b), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—*Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Electronic Subcontracting Reporting System (eSRS) means the Government wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;

- (v) Small disadvantaged business concerns (including ANC and Indian tribes);
- and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to

all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved,

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned

subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the *ISR* resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

Alternate I (OCT 2001). As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the

Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (OCT 2001). As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

Alternate III (OCT 2014). As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors

with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR.* (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

[48 FR 42478, Sept. 19, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §52.219-9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in [22.103-5\(a\)](#), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

52.222-3 Convict Labor.

As prescribed in [22.202](#), insert the following clause:

CONVICT LABOR (JUNE 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

52.222-4 Contract Work Hours and Safety Standards - Overtime Compensation.

As prescribed in [22.305](#), insert the following clause:

**Contract Work Hours and Safety Standards—
Overtime Compensation (MAY 2014)**

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or

subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

[65 FR 46067, July 26, 2000, as amended at 70 FR 33667, June 8, 2005; 79 FR 24217, Apr. 29, 2014]

52.222-6 Construction Wage Rate Requirements

As prescribed in 22.407(a), insert the following clause:

Construction Wage Rate Requirements (MAY 2014)

(a) *Definition—Site of the work—*(1) Means—

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

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

(A) Located in the United States; and

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

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

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

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

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under

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the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

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

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(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written

request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

[53 FR 4945, Feb. 18, 1988, as amended at 57 FR 44263, Sept. 24, 1992; 59 FR 67038, Dec. 28, 1994; 70 FR 33667, June 8, 2005; 79 FR 24217, Apr. 29, 2014]

52.222-7 Withholding of Funds.

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

Withholding of Funds (MAY 2014)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

[53 FR 4945, Feb. 18, 1988, as amended at 79 FR 24217, Apr. 29, 2014]

52.222-8 Payrolls and Basic Records.

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

Payment for Overtime Premiums (MAY 2014)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or

her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a *Statement of Compliance*, signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the *Statement of Compliance* required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

[53 FR 4945, Feb. 18, 1988, as amended at 75 FR 34287, June 16, 2010; 79 FR 24217, Apr. 29, 2014]

52.222-9 Apprentices and Trainees.

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

APPRENTICES AND TRAINEES (JULY 2005)

(a) *Apprentices.*(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

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

(ii) In the first **90 days of probationary** employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.*(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

52.222-10 Compliance with Copeland Act Requirements

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

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

52.222-11 Subcontracts (Labor Standards).

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

Subcontracts (Labor Standards) (MAY 2014)

(a) *Definition. Construction, alteration or repair*, as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

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

(2) Painting and decorating;

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

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the *site of the work* definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards—Overtime Compensation (if the clause is included in this contract);

- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination—Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Construction Wage Rate Requirements and Related Regulations;
and
- (11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

[53 FR 4947, Feb. 18, 1988, as amended at 70 FR 33668, June 8, 2005; 79 FR 24217, Apr. 29, 2014]

52.222-12 Contract Termination—Debarment.

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

Contract Termination—Debarment (MAY 2014)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

[79 FR 24218, Apr. 29, 2014]

52.222-13 Compliance With Construction Wage Rate Requirements and Related Regulations.

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

**COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS
AND RELATED REGULATIONS (MAY 2014)**

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

[79 FR 24218, Apr. 29, 2014]

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.

52.222-15 Certification of Eligibility.

As prescribed in 22.407(a), insert the following clause:

Certification of Eligibility (MAY 2014)

(a) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

[53 FR 4947, Feb. 18, 1988, as amended at 79 FR 24218, Apr. 29, 2014]

52.222-16 Approval of Wage Rates.

As prescribed in 22.407(b), insert the following clause:

Approval of Wage Rates (MAY 2014)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Construction Wage Rate Requirements minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If

the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

[53 FR 4947, Feb. 18, 1988, as amended at 79 FR 24218, Apr. 29, 2014]

52.222-26 Equal Opportunity.

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

Equal Opportunity (APR 2015)

(a) *Definitions.* As used in this clause— *Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html. *United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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*]. [48 FR 42478, Sept. 19, 1983, as amended at 63 FR 70286, Dec. 18, 1998; 67 FR 13067, Mar. 20, 2002; 72 FR 13588, Mar. 22, 2007; 80 FR 19509, Apr. 10, 2015]

52.222-27 Affirmative Action Compliance Requirements for Construction.

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

**Affirmative Action Compliance Requirements
for Construction (APR 2015)**

(a) *Definitions.* As used in this clause— *Covered area* means the geographical area described in the solicitation for this contract.

Deputy Assistant Secretary means the Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs, U.S. Department of Labor, or a designee.

Employer identification number means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941. *Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

Minority means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in

which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are no segregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor—

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990; 63 FR 70286, Dec. 18, 1998; 80 FR 19508, Apr. 10, 2015]

52.222-35 Equal Opportunity for Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR VETERANS (JULY 2014)

(a) *Definitions.* As used in this clause— “Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

Alternate I (July 2014). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract:
_____ [List term(s)]. [79 FR 43579, July 25, 2014]

52.222-36 Equal Opportunity for Workers with Disabilities.

As prescribed in 22.1408(a), insert the following clause:

**52.222-36 Equal Opportunity for Workers
with Disabilities (July 2014)**

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause

prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts*. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

Alternate I (July 2014). As prescribed in 22.1408(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract:
_____ [List term(s)]. [79 FR 43579, July 25, 2014]

52.222-37 Employment Reports on Veterans.

As prescribed in 22.1310(b), insert the following clause:

Employment Reports on Veterans (JULY 2014)

(a) *Definitions*. As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “active duty wartime or campaign badge veteran,” and “recently separated veteran,” have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (*i.e.*,

active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

[75 FR 60253, Sept. 29, 2010, as amended at 79 FR 43579, July 25, 2014]

52.222-41 Service Contract Labor Standards

As prescribed in 22.1006(a), insert the following clause:

Service Contract Labor Standards (MAY 2014)

(a) *Definitions.* As used in this clause—

Contractor when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

Service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in part 541 of title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in subpart C of 29 CFR part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of

employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of Compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with subpart D of 29 CFR part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained

wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of 41 U.S.C. 6703 and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control

or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Service Contract Labor Standards statute—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and

in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and Interpretations.* Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under 41 U.S.C. 6706.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under 41 U.S.C. 6706.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to 41 U.S.C. 6707 prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by 41 U.S.C. 6703(1) without diminishing any fringe benefits or cash payments in lieu thereof required under 41 U.S.C. 6703(2), in accordance with the conditions and procedures prescribed for the

employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship and Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by 41 U.S.C. 6703(1), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of 41 U.S.C. 6707(c).

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes 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)

[54 FR 19828, May 8, 1989, as amended at 70 FR 33669, June 8, 2005; 72 FR 63082, Nov. 7, 2007; 79 FR 24219, Apr. 29, 2014]

52.222-55 Minimum Wages Under Executive Order 13658.

As prescribed in [22.1906](#), insert the following clause:

Minimum Wages Under Executive Order 13658 (Dec 2014)

(a) Definitions. As used in this clause—

“United States” means the 50 states and the District of Columbia.

“Worker” —(1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and

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

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

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

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

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

(b) Executive Order Minimum Wage rate.

(1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016 and annually thereafter, to meet the Secretary of Labor’s annual E.O. minimum wage. The Administrator of the Department of Labor’s Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor website) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and

for associated labor costs and relevant subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

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

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)(1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

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

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

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

(2) This clause does not apply to—

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

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

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

(B) Students whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(b\)](#).

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

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

29 CFR (Code of Federal Regulations) Clauses

Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States

- 3.1 Purpose and Scope
- 3.2 Definitions
- 3.3 Weekly Statement with Respect to Payment of Wages
- 3.4 Submission of Weekly Statements and the Preservation and Inspection of Weekly Payroll Records
- 3.5 Payroll Deductions Permissible without Application to or Approval of the Secretary of Labor
- 3.6 Payroll Deductions Permissible with the Approval of the Secretary of Labor
- 3.7 Application for the Approval of the Secretary of Labor
- 3.8 Action by the Secretary of Labor Upon Applications
- 3.9 Prohibited Payroll Deductions
- 3.10 Methods of Payment of Wages
- 3.11 Regulations Part of Contract

Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Funded Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards – Overtime Compensation.

- 5.1 Purpose and Scope
- 5.2 Definitions
- 5.5 Contract Provisions and Related Matters
- 5.6 Enforcement
- 5.7 Reports to the Secretary of Labor
- 5.8 Liquidated Damages under the Contract Work Hours and Safety Standards – Overtime Compensation
- 5.9 Suspension of Funds
- 5.10 Restitution, criminal action
- 5.11 Disputes Concerning Payment of Wages
- 5.12 Debarment Proceedings
- 5.13 Rulings and Interpretations
- 5.14 Variations, Tolerances, and Exemptions from Parts 1 and 3
- 5.15 Limitations, Variations, Tolerances and Exemptions under the Contract Work Hours and Safety Standards Act
- 5.16 Training Plans Approved or Recognized by Department of Labor prior to 25 Aug 1975
- 5.17 Withdrawal of Approval of a Training Program

Part B – Interpretations of the Fringe Benefits Provisions of the Construction Wage Rate Requirements

- 5.20 Scope and Significant of this subpart.
- 5.22 Effect of the Construction Wage Rate Requirements Fringe Benefit Provisions
- 5.23 The Statutory Provisions
- 5.24 The Basic Hourly Rate of Pay
- 5.25 Rate of Contributions or Cost for Fringe Benefits
- 5.26 **** Contribution Irrevocably made *** to a Trustee or to a Third Party Person
- 5.27 *** Fund, Plan or Program
- 5.28 Unfunded Plan
- 5.29 Specific Fringe Benefits
- 5.30 Types of Wage Determinations
- 5.31 Meeting Wage Determination Obligations
- 5.32 Overtime Payments

SITE OF THE WORK – 29 CFR Subtitle A

(1) The term “site of the work” is defined as follows:

(1) The “site of the work” is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (1)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(2) Except as provided in paragraph (1)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the site of the work provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the “site of the work” are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of the work. Such permanent, previously established facilities are not a part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

REQUEST FOR AUTHORIZATION OF
ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX
 SERVICE CONTRACT
 CONSTRUCTION CONTRACT

OMB No.: 9000-0089
Expires: 02/28/96

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER

1. TO: ADMINISTRATOR, Employment Standards Administration
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210

2. FROM (REPORTING OFFICE)
USAED, FORT WORTH,
ATTN: (your office, address including city and zip)

3. CONTRACTOR (Prime on ALL)
ABC Construction Company; 123 Bluebird Lane, El Paso, Texas 78986

4. DATE OF REQUEST
October 5, 2014

5. CONTRACT NUMBER W9126G-15-C-0002	6. DATE BID OPENED (SEALED BIDDING) 9/18/14	7. DATE OF AWARD 9/30/14	8. DATE CONTRACT WORK STARTED 10/02/14	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
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10. SUBCONTRACTOR (IF ANY) (complete if the request is for a subcontractor's workforce)
ComTech Communications Systems, 446 Robin Lane, El Paso, Texas 78986

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)
Tactical Equipment Shop and Associated Facilities, Fort Bliss, Texas

12. LOCATION (CITY, COUNTY AND STATE)
Fort Bliss, El Paso, Texas

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: TX100112 DATED: Modification 2 dtd 4/3/15

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLES(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS
(Use reverse or attach additional sheets, if necessary)	\$18.00	\$2.00
Lead Cable Technician (Low Voltage Telephone Cable)		
Lead and inspect cable pullers in the field. Assure proper cable installation. IAW the contract specifications.		

EXAMPLE

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)
N/A or Subcontractor's signature

15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
Prime on All

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE
If known employee (s) signature (s) or the statement "Unknown at this time"

TITLE
Title of Block 16

CHECK APPROPRIATE BOX-REFERENCING BLOCK 13
 AGREE DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE Completed by Federal Labor Advisor, ACO or Contracting Officer	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX
<input type="checkbox"/> SERVICE CONTRACT
<input type="checkbox"/> CONSTRUCTION CONTRACT

OMB No.: 9000-0089
Expires: 02/28/96

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER

1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, DC. 20210	2. FROM (REPORTING OFFICE)
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3. CONTRACTOR	4. DATE OF REQUEST
---------------	--------------------

5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
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10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLES(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	DATED:	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS
(Use reverse or attach additional sheets, if necessary)			

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
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16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
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TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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STATEMENT OF COMPLIANCE

Form Approved
OMB No. 1215-0149
Expires June 30, 2000

The public reporting burden for this collection of information is estimated to average 16 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services and Communications Directorate (1215-0149). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN THE COMPLETED FORM TO THE CONTRACTING OFFICER.

1. PAYROLL NUMBER 01	2. PAYROLL PAYMENT DATE (YYYYMMDD) 2015/04/17	3. CONTRACT NUMBER W9126G-15-C-0002	4. DATE (YYYYMMDD) 2015/04/10
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I, Jane Ida Doe, I Payroll Administrator do hereby state
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by ABC Construction Company
Tactical Equipment Shop and Associated Facilities,
(Contractor or subcontractor)
on the Fort Bliss, Texas; that during the payroll period commencing on the 4th day of
(Building or work)
April, 2015, and ending the 10th day of April, 2015, all persons employed
on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on
behalf of said ABC Construction Company
(Contractor or subcontractor)
and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible
deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended
(48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

FICA \$ 150.00 City Work Fees \$ 25.00 Union Dues \$30.00 Tools \$5.00
Federal Withholding Taxes \$175.00 Medicare \$10.00 Wages Advanced \$35.00 Child Support \$120.00

(List all deductions made from employee earnings – Copeland and Non-Copeland)

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (Craft)	EXPLANATION
Brick Mason Tenders	Are paid fringe benefits, as listed in the wage decision in cash.
Bricklayers	Are paid fringe benefits, as listed in the wage decision, to funds noted in remarks.
Example	

5. REMARKS

Fringe benefit payments made to:
United Bricklayers \$.75 Pension \$.50 Training \$ 1.62 H&H
123 Bold Street
El Paso, Texas 78986

6. NAME (Last, First, Middle Initial) Doe, Jane Ida	7. TITLE Payroll Administrator	8. SIGNATURE <i>Jane Ida Doe</i>
---	--	-------------------------------------

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

INSTRUCTIONS FOR PREPARATION OF DD FORM 879,
STATEMENT OF COMPLIANCE

This statement of compliance meets requirements resulting from the Davis-Bacon Act (40 U.S.C. 276a - 276a-7). Under this law, the contractor is required to pay minimum wage rates and fringe benefits as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to approved plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of its payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that either it is paying fringes required by the contract to approved plans, funds, or programs, or it is paying employees cash in lieu of fringes. Detailed instructions follow:

CONTRACTORS THAT PAY ALL REQUIRED FRINGE BENEFITS

A contractor that pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall show on the face of the payroll the basic cash hourly rate and overtime rate paid to employees. Such a contractor shall check Section 4(a) of the statement to indicate that payment is also being made to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

CONTRACTORS THAT PAY NO FRINGE BENEFITS

A contractor that pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$X.XX/\$X.XX. In addition, the contractor shall mark Section 4(b) of the statement to indicate that payment of fringe benefits is being made in cash directly to employees. Any exceptions shall be noted in Section 4(c).

USE OF SECTION 4(c), EXCEPTIONS

Any contractor that is making payment to approved plans, funds, or programs in amounts less than the wage determination required is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may mark, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

STATEMENT OF COMPLIANCE

*Form Approved
OMB No. 1215-0149
Expires June 30, 2000*

The public reporting burden for this collection of information is estimated to average 16 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services and Communications Directorate (1215-0149). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN THE COMPLETED FORM TO THE CONTRACTING OFFICER.

1. PAYROLL NUMBER	2. PAYROLL PAYMENT DATE (YYYYMMDD)	3. CONTRACT NUMBER	4. DATE (YYYYMMDD)
--------------------------	---	---------------------------	---------------------------

I, _____ do hereby state
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____
(Contractor or subcontractor)

on the _____ ; that during the payroll period commencing on the _____ day of _____
(Building or work)

, _____, and ending the _____ day of _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned by any person
(Contractor or subcontractor)

and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) **WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS**

- In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) **WHERE FRINGE BENEFITS ARE PAID IN CASH**

- Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

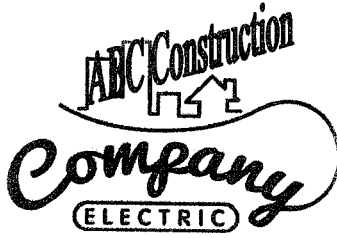
(c) **EXCEPTIONS**

EXCEPTION <i>(Craft)</i>	EXPLANATION

5. REMARKS

6. NAME <i>(Last, First, Middle Initial)</i>	7. TITLE	8. SIGNATURE
---	-----------------	---------------------

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.



123 Bluebird Lane
El Paso, Texas 78986
915-000-1111

PAYROLL DEDUCTION AUTHORIZATION

The undersigned hereby authorizes **ABC Construction** to deduct \$ _____ from my gross earnings each payroll period beginning, the following:

In payment for:	Amount:
_____ Credit Union	\$ <u>40.00</u>
_____ Employee Savings Plan	\$ <u>30.00</u>
_____ Pension Plan	\$ <u>1.50 per hour</u>
_____ Union Dues	\$ <u>1.62 per hour</u>
_____ Uniform	\$ <u>10.00</u>
_____ Health Insurance	\$ <u>50.00</u>
_____ Dental	\$ <u>30.00</u>
_____	\$ _____
_____	\$ _____
Total	\$ _____

Fringe benefits payments made to:
United Bricklayers, 123 Bold Street, El Paso, Texas 78986

Signature David Wilson Date April 3, 2015
 Print Name David Wilson
 Social Security Number 0000

Example

Please keep a copy of this for your records.

Subpart A – Davis-Bacon and Related Acts Provisions and Procedures – 29 CFR

Sec. 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Fringe benefits payments						
Classes	Basic hourly rate	Health and welfare	Apprenticeship			
			Pensions	Vacations	program	Others
Laborers	\$3.25					
Carpenters	4.00	\$0.15				
Painters	3.90	.15	\$0.10	\$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		\$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

US DEPARTMENT OF LABOR – BUREAU OF APPRENTICESHIP AND TRAINING

APPRENTICE CERTIFICATION

To:

Sub Electric Company
123 Any Street
Any town, USA 7xxxx

The following individuals are apprentices registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, under the sponsorship of Program Number TX999999999:

Sub Electric Company
123 Any Street
Any town, USA 7xxxx

<u>APPRENTICE ID</u>	<u>SSN</u>	<u>APPRENTICE NAME</u>	<u>TRADE</u>	<u>DATE REGISTERED</u>
TX07E234567 03/20/2007	***-**-1234	JOHN Q PUBLIC	ELECTRICIAN	
TX08N987654 06/28/2008	***-**-5678	JOE D SMITH	ELECTRICIAN	

CERTIFIED BY:

DATE ISSUED:

January 31, 2009
-- Signature --

BAT Representative

*****VOID 90 DAYS FROM ISSUE DATE*****

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Construction Wage Rate Requirements and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards – Overtime Compensation whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

3.2 Definitions.

As used in the regulations in this part:

(a) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part.

(b) The terms *construction, prosecution, completion, or repair* mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms *public building or public work* include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term *building or work financed in whole or in part by loans or grants from the United States* includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is *employed* and receiving *wages*, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term *any affiliated person* includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term *Federal agency* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term *employee* shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available

at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A *bona fide prepayment of wages* is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under §516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under §3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the

Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of §3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of §3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of 3.6; and shall notify the applicant in writing of his decision.

3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under 3.6 are prohibited.

3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

Date _____

I, _____ (Name of Signatory Party) _____ (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____

_____ (Contractor or Subcontractor) on the _____ (Building or Work) _____ that during the payroll period commencing on the _____ day of _____ and ending the _____ day of _____

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____

_____ (Contractor or Subcontractor) from the full _____

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357, 40 U.S.C. § 3145), and described below.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That _____

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above-referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)

EXPLANATION

Table with 2 columns: EXCEPTION (CRAFT) and EXPLANATION. Multiple empty rows for entry.

REMARKS:

Table with 2 columns: NAME AND TITLE and SIGNATURE. Empty rows for entry.

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

EMPLOYEE'S RESTITUTION RECEIPT

NAME & ADDRESS OF PRIME CONTRACTOR ABC Construction Company 123 Bluebird Lane El Paso, Texas 78986	DATE: April 13, 2015 DISTRICT: USAED, Fort Worth CONTRACT NO. W9126G-15-C-0002 or W9126G-15-D-0002, TO 01
NAME & ADDRESS OF SUBCONTRACTOR Complete Communications Systems 446 Robin Lane El Paso, Texas 78986	PROJECT: Tactical Equipment Shop and Associated Facilities, Fort Bliss, Texas

EMPLOYEE'S NAME & ADDRESS	PERIOD COVERED	CLASSIFICATION	HOURS WORKED		HOURLY RATE ACTUALLY PAID		HOURLY RATE IN CONTRACT	
			ST	OT	ST	OT	BHR	FB
David Wilson 466 Robin Lane El Paso, Texas 78986	04/03/15 to 04/17/15	Lead Cable Technician	48	0	\$18.00	\$0.00	\$18.00	\$2.00

AMOUNT OF GROSS WAGES EARNED FROM HOURS INDICATED ABOVE IN ACCORDANCE WITH CONTRACT RATES:	\$800.00
AMOUNT OF WAGES ACTUALLY RECEIVED FOR HOURS INDICATED ABOVE:	\$720.00
GROSS AMOUNT OF WAGE RESTITUTION DUE:	\$80.00

I DO HEREBY CERTIFY THAT I HAVE RECEIVED WAGE RESTITUTION DUE AS FOLLOWS:

GROSS AMOUNT: **\$80.00**

LESS LEGAL PAYROLL DEDUCTIONS: **\$20.00**

NET PAY RECEIVED: **\$60.00**

THE ABOVE REPRESENTS FULL RESTITUTION FOR THE HOURS WORKED AS INDICATED ABOVE.

David Wilson

(SIGNATURE OF EMPLOYEE)

AS REPRESENTATIVE OF THE ABOVE NAMED (CONTRACTOR OR SUBCONTRACTOR), I DO HEREBY CERTIFY THAT PAYMENT HAS BEEN MADE TO THE ABOVE EMPLOYEE FOR WAGES DUE AS INDICATED ABOVE.

Jane Ida Doe

(SIGNATURE)
ComTech Communications Systems

Bookkeeper

(TITLE)



BC Construction, Mary J. Doe, Notary Public

(SIGNATURE & ADDRESS OF IMPARTIAL WITNESS OR NOTARY)

Example

EMPLOYEE'S RESTITUTION RECEIPT

NAME & ADDRESS OF PRIME CONTRACTOR	DATE:
	DISTRICT
	CONTRACT NO.
NAME & ADDRESS OF SUBCONTRACTOR	PROJECT

EMPLOYEE'S NAME & ADDRESS	PERIOD COVERED	CLASSIFICATION	HOURS WORKED		HOURLY RATE ACTUALLY PAID		HOURLY RATE IN CONTRACT	
			ST	OT	ST	OT	BHR	FB

AMOUNT OF GROSS WAGES EARNED FROM HOURS INDICATED ABOVE
IN ACCORDANCE WITH CONTRACT RATES: _____

AMOUNT OF WAGES ACTUALLY RECEIVED FOR HOURS INDICATED ABOVE: _____

GROSS AMOUNT OF WAGE RESTITUTION DUE: _____

I DO HEREBY CERTIFY THAT I HAVE RECEIVED WAGE RESTITUTION DUE AS FOLLOWS:

GROSS AMOUNT:

LESS LEGAL PAYROLL DEDUCTIONS:

NET PAY RECEIVED:

THE ABOVE REPRESENTS FULL RESTITUTION FOR THE HOURS WORKED AS INDICATED ABOVE.

(SIGNATURE OF EMPLOYEE)

AS REPRESENTATIVE OF THE ABOVE NAMED (CONTRACTOR OR SUBCONTRACTOR), I DO HEREBY CERTIFY THAT PAYMENT HAS BEEN MADE TO THE ABOVE EMPLOYEE FOR WAGES DUE AS INDICATED ABOVE.

(SIGNATURE)

(TITLE)

(SIGNATURE & ADDRESS OF IMPARTIAL WITNESS OR NOTARY)

STATEMENT AND ACKNOWLEDGMENT

OMB No. 9000-0014
Expires 03/31/92

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, DC 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO. W9126G-15-C-0002 or W9126G-15-D-0002, To 1	2. DATE SUBCONTRACT AWARDED (Date "B" signs)	2. SUBCONTRACT NUMBER (Prime Contractor Internal Numbering)
4. PRIME CONTRACTOR (Name, address and ZIP code) Prime Contractor on ALL		5. SUBCONTRACTOR (Name, address and ZIP code) Subcontractor "B" (2nd Tier) (This Block is to be completed by the subcontractor who is actually performing the work regardless of tier ship)
6. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 by (Name of Awarding Firm) <u>Subcontractor "A" (1st Tier)</u> (The firm, regardless if tier ship AWARDING work to be performed)		

to the subcontractor identified in Item 5, for the following work

Fully describe the work to be performed.

Listing only the Technical Specifications Section Number is **NOT** acceptable.

Reference to the Technical Sections and description of the work to be performed by that section.

Example: Responsible for high-voltage power transmission and distribution lines, including outdoor lighting, cabling design, installation, and maintenance low-voltage installations, climate controls, wireless networks, energy-efficient lighting, telecommunications, fiber optics, and security systems.

7. PROJECT Tactical Equipment Shop and Associated Facilities	8. LOCATION Fort Bliss, Texas	
9. NAME AND TITLE OF PERSON SIGNING (Prime contractor authorized representative)	10. BY (Signature) (Prime contractor authorized representative)	11. DATE SIGNED

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

12. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract	
<ul style="list-style-type: none"> Contract Work Hours and Safety Standards Act - Overtime Compensation - Construction Payrolls and Basic Records Withholding of Funds Disputes Concerning Labor Standards 	<ul style="list-style-type: none"> Davis-Bacon Act Apprentices and Trainees Compliance with Copeland Regulations Subcontracts Contract Termination-Debarment Certification of Eligibility

13. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

Enter name of 1st Tier - 2nd Tier - 3rd Tier - 4th Tier, etc.

"A" "B" "C" "D"

(regardless of tier ship each subcontractor is required to submit a separate SF 1413)

14. NAME AND TITLE OF PERSON SIGNING To be completed by subcontractor in Block 5 (who is actually perform the work, authorized representative)	15. BY (Signature) (Authorized Representative of Subcontractor)	16. DATE SIGNED
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STATEMENT AND ACKNOWLEDGMENTOMB No.: 9000-0014
Expires: 03/31/92

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PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER
4. PRIME CONTRACTOR (Name, address and ZIP code)		5. SUBCONTRACTOR (Name, address and ZIP code)

6. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 by (Name of Awarding Firm) _____

to the subcontractor identified in Item 5, for the following work:

7. PROJECT	8. LOCATION	
9. NAME AND TITLE OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

12. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

Contract Work Hours and Safety	Davis-Bacon Act
Standards Act - Overtime	Apprentices and Trainees
Compensation - Construction	Compliance with Copeland Regulations
Payrolls and Basic Records	Subcontracts
Withholding of Funds	Contract Termination-Debarment
Disputes Concerning Labor Standards	Certification of Eligibility

13. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

14. NAME AND TITLE OF PERSON SIGNING	15. BY (Signature)	16. DATE SIGNED
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PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME COMPENSATION

Subpart A—Construction Wage Rate Requirements and Related Acts Provisions and Procedures

5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by §5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in §5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by §5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of §5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to §5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by §5.5 and the applicable statutes listed in 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments there under. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in §5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in §5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Construction Wage Rate Requirements, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards – Overtime Compensation, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

5.8 Liquidated damages under the Contract Work Hours and Safety Standards – Overtime Compensation.

(a) The Contract Work Hours and Safety Standards - Overtime Compensation requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in 5.5 and the applicable statutes listed in 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to §5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Construction Wage Rate Requirements or §5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefore, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.