

CHAPTER 2 - LABOR LAWS, REGULATIONS AND CONTRACT PROVISIONS

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

2-2. The Davis-Bacon Act (40 USC 3141-48) (DBA). This Act applies to construction contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party. It specifies that not less than minimum wages be paid to the various classes of laborers and mechanics employed on a particular project based on the wages prevailing in the area as determined by the Secretary of Labor. PL 88-349 amended the Act as of July 2, 1964, to include fringe benefits in the "prevailing rate."

2-3. The Walsh-Healey Act (41 USC 35-45). This Act prescribes minimum wages to be paid contractor's employees on contracts in excess of \$10,000 for the manufacture or furnishing of supplies. The DOL has not issued wage determinations under the Act for many years. Accordingly, the Fair Labor Standards Act minimum wage generally applies. Enforcement responsibility rests with the DOL.

2-4. The Fair Labor Standards Act of 1938 (29 USC 201). This Act provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division within the DOL for purposes of interpretation and enforcement (including investigations and inspections of government contractors), and prohibits oppressive child labor. The Act applies to all employees, unless otherwise exempted, who are engaged in: (1) interstate commerce or foreign commerce; (2) the production of goods for such commerce; or (3) any closely related process or occupation essential to such production. Enforcement responsibilities lie with the DOL.

2-5. The Copeland Act (40 USC 3142c and 18 USC 874). This Act makes it unlawful to induce, by force or otherwise, any person employed within the United States in the construction or repair of public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment.

2-6. The Contract Work Hours and Safety Standards Act (40 USC 327-333) (CWHSSA). This Act applies to both service and construction contracts and requires employees to be paid time and one-half for all hours worked in excess of 40 per week. The Act also contains certain health and safety standards.

2-7. The McNamara-O'Hara Service Contract Act (41 USC 351-358) (SCA). This Act applies to Federal contracts for services in the United States in excess of \$2,500 through the use of service employees. Service employees include all employees working under a contract except those in executive, administrative or professional capacities as those terms are defined in 29 CFR 541. This definition therefore includes many "white collar" employees formerly excluded prior to the 1976 amendment to the Act. The Act requires minimum wages and fringe benefits as determined to be prevailing by the Secretary of Labor. The DOL has primary enforcement responsibility for this law.

2-8. The Brooks Act (40 USC 541 - 544). This Act sets forth mandatory procedures for contracting for architect-engineer (A-E) services. The Act requires that the Federal Government "publicly announce all requirements" for A-E services, "select firms on the basis of demonstrated competence and qualifications," and "negotiate a contract with the highest qualified firm" at a fair and reasonable price.

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

a. Executive Orders 11246, 11375 and 12086 provide that contractors and subcontractors will act affirmatively to ensure that applicants are employed, and that employees are treated equally during employment, without regard to race, color, religion, sex or national origin.

b. Executive Order 13201 requires contractors to post notices in their plants, offices and work sites apprising affected workers of their right to seek a refund of their union dues if the

subject union expends their payments on administrative activities unrelated to collective bargaining, contract administration, or grievance adjustment.

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

- a. Notice to the Government of Labor Disputes (FAR 52.222-1)
- b. Convict Labor (FAR 52.222-3)
- c. Contract Work Hours and Safety Standards Act-Overtime Compensation (FAR 52.222-4)
- d. Certification Regarding Knowledge of Child Labor for Listed End Products (FAR 52.222-18)
- e. Certification of Nonsegregated Facilities (FAR 52.222-21)
- f. Previous Contracts and Compliance Reports (FAR 52.222-22)
- g. Affirmative Action Compliance (FAR 52.222-25)
- h. Equal Opportunity (FAR 52.222-26)
- i. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (FAR 52.222-35)
- j. Affirmative Action for Workers with Disabilities (FAR 52.222-36)
- k. Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (FAR 52.222-37)
- l. Service Contract Act of 1965, as Amended (FAR 52.222-41)
- m. Statement of Equivalent Rates for Federal Hires (FAR 52.222-42)
- n. Fair Labor Standards Act and Service Contract Act---Price Adjustment (Multiple Year and Option Contracts) (FAR 52.222-43)
- o. Fair Labor Standards Act and Service Contract Act---Price Adjustment (FAR 52.222-44)
- p. Evaluation of Compensation for Professional Employees (FAR 52.222-46)
- q. Exemption from Application of Service Contract Act Provisions---Contractor Certification (FAR 52.222-48)
- r. Service Contract Act---Place of Performance Unknown (FAR 52.222-49)
- s. Restrictions on Employment of Personnel (DFARS 252.222-7000)
- t. Right of First Refusal of Employment--Closure of Military Installations (DFARS 252.222-7001)

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Guidance as to which clauses are to be incorporated within service contracts is set forth at FAR 22.1005, 22.1006 and DFARS 222).