

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005-79; FAR Case 2015-003; Item I; Docket No. 2014-0050; Sequence No. 1]

RIN 9000-AM82

Federal Acquisition Regulation; Establishing a Minimum Wage
for Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order, Establishing a Minimum Wage for Contractors, and a final rule issued by the Department of Labor.

DATES: Effective: [Insert date of publication in the **FEDERAL REGISTER**.]

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat Division on or before [Insert date 60 days after **FEDERAL REGISTER** publication date] to be considered in the formation of the final rule.

Applicability: This rule applies to solicitations issued on or after the effective date of the rule. Applicability of the clause at 52.222-55, Minimum Wages Under Executive Order 13658, to existing contracts that do not contain a class deviation clause implementing the Executive Order (E.O.), is as follows—

(1) Contracting officers shall include the clause in bilateral modifications extending the contract when such modifications are individually or cumulatively longer than six months.

(2) In accordance with FAR 1.108(d)(3), contracting officers are strongly encouraged to include the clause in existing indefinite-delivery indefinite-quantity contracts, if the remaining ordering period extends at least six months and the amount of remaining work or number of orders expected is substantial.

ADDRESSES: Submit comments identified by FAC 2005-79, FAR Case 2015-003 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-003". Select the link "Comment Now" that corresponds with "FAR Case 2015-003". Follow the instructions provided at the "Comment Now" screen. Please

include your name, company name (if any), and "FAR Case 2015-003" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001.

Instructions: Please submit comments only and cite "FAR Case 2015-003" in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202-501-0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-79, FAR Case 2015-003.

SUPPLEMENTARY INFORMATION:

Applicability:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement E.O. 13658, Establishing a Minimum Wage for Contractors. The E.O. was signed February

12, 2014, and published in the Federal Register at 79 FR 9851, on February 20, 2014. The FAR is also implementing a final rule issued by the Wage and Hour Division of the Department of Labor (DOL), published at 79 FR 60634, on October 7, 2014, also entitled "Establishing a Minimum Wage for Contractors." The DOL rule added a new 29 CFR part 10. The DOL rule covers both FAR-based contracts, and non-FAR-based contracts and contract-like instruments; this interim rule only applies to FAR-based contracts.

The E.O. seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by raising the hourly minimum wage paid to workers on specified Federal contracts. Beginning January 1, 2015, the hourly rate will be \$10.10, and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor. The E.O. explains that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and accompanying costs, and reduces supervisory costs," and that "[t]hese savings and quality improvements will lead to improved economy and efficiency in Government procurement." The E.O. directed DOL to issue regulations by October 1, 2014, and for the

FAR Council to issue regulations within 60 days of the DOL regulations.

Section 8(c) of the E.O. strongly encouraged agencies to take all reasonable and legally permissible steps to ensure individuals working on Federal contracts subject to the E.O. would be paid an hourly wage of at least \$10.10 as of January 1, 2015. This paragraph intended that agencies would apply the E.O. minimum wage to contracts awarded between the issuance of the E.O. and the effective date of the FAR rule. OMB and DOL issued a joint memorandum on June 12, 2014 to the Executive Departments and Agencies providing guidance for implementing the requirements of the E.O. prior to January 1, 2015 and prior to the issuance of final DOL regulations. This memorandum requested that the FAR Council provide standard wording for a clause to be included in solicitations and contracts pursuant to a deviation from the FAR pending issuance of a FAR rule implementing DOL regulations. The FAR Council, in coordination with DOL, drafted matching class deviations with a contract clause to implement Section 8(c) of the E.O. DoD and NASA issued the class deviations. GSA issued CAAC Letter 2014-03 on June 25, 2014 to the Civilian Agency Acquisition Council (CAAC) agencies which constituted

consultation with the CAAC Chair, as required by FAR 1.404(a)(1), for use of a model deviation clause.

Discussion and Analysis

A. This FAR interim rule only applies to acquisitions subject to the FAR. The DOL rule applies to FAR acquisitions as described in FAR 1.104, and actions that are not governed by the FAR such as contracts for concessions and contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

B. The DOL regulatory requirements included in the FAR rule:

1. Require that the minimum hourly wage rate paid to workers performing on, or in connection with, contracts and subcontracts covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, is at least \$10.10 per hour beginning January 1, 2015, and beginning January 1, 2016, and annually thereafter an amount determined by the Secretary of Labor (Secretary) (29 CFR 10.1) (FAR 22.1902 and 52.222-55(b)).

2. Define a "worker" to whom the rule applies (29 CFR 10.2) (FAR 22.1901 and 52.222-55(a)).

3. Apply to construction contracts covered by the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act, FAR subpart 22.4), and to contracts for services covered by the Service Contract Labor Standards statute (formerly known as the Service Contract Act, FAR subpart 22.10), and workers whose wages are governed by those statutes or the Fair Labor Standards Act (FLSA) (29 CFR 10.2 and 10.3) (FAR 22.1903, 22.1906 and 52.222-55(c)).

4. Only apply to contracts with the Federal Government requiring performance in whole or in part within the United States (the 50 states and the District of Columbia) (29 CFR 10.2 and 10.3) (FAR 22.1903, 22.1906 and 52.222-55 (a), (b)(1), and (k)).

5. Provide that the rule does not excuse a contractor's noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum established under the E.O. (29 CFR 10.5 and 10.22) (FAR 22.1902(b) and 52.222-55(b)(8)).

6. Exempt the following individuals from the requirements of the rule (29 CFR 10.2 and 10.4) (FAR 22.1901 and 22.1903(b)(2), and 52.222-55(a) and (c)):

a. Employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the FLSA pursuant to 29 U.S.C. 213(a) and 214(a)-(b), except for workers who are otherwise covered by the Wage Rate Requirements (Construction) statute and the Service Contract Labor Standards statute. These individuals include but are not limited to:

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

ii. Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

iii. Individuals employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541.

b. FLSA-covered individuals performing in connection with covered contracts, i.e., those workers who perform work 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.

7. Prohibit any person from discriminating against any worker because the worker has filed a complaint, instituted or caused to be instituted a proceeding under the DOL rule, or has testified or is about to testify in any such proceeding (29 CFR 10.6 and 10.44) (FAR 22.1905(d) and 52.222-55(i)).

8. Provide that the clause flows down to all covered subcontracts at any tier. The DOL rule provides that the contractor and any upper-tier subcontractor are responsible for the compliance by any subcontractor or lower-tier subcontractor with the E.O. minimum wage requirements, whether or not the contract clause was included in the subcontract (29 CFR 10.21) (52.222-55(j) and (k)).

9. Provide that the Government may withhold payment from the contractor to reimburse unpaid wages and shall withhold payment for failure to comply with the recordkeeping requirement under the contract or any other Federal contract with the same contractor (29 CFR 10.11,

10.44, and Appendix A (g)(3)) (FAR 22.1905(a) and (d) and 52.222-55(e) and (g)).

10. Provide that a contracting agency is responsible for forwarding relevant information to the DOL, within 14 calendar days of receipt of a complaint alleging contractor noncompliance with the E.O. or the DOL rule or of being contacted by DOL (29 CFR 10.11) (FAR 22.1905(b)).

11. Describe the methodology for determining the new E.O. minimum wage and for notifying the public of the new applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage is to take effect. (29 CFR 10.5(b) and 10.12) (FAR 22.1904 and 52.222-55(b)).

12. Prohibit a contractor from discharging any part of minimum wage obligation under the E.O. by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof. (29 CFR 10.22(b)) (FAR 52.222-55(b)).

13. Provide that a contractor may satisfy the wage payment obligation to a tipped employee through a combination of an hourly cash wage (which, in accordance with the E.O. and DOL's regulation, must be at least \$4.90

an hour, beginning January 1, 2015, and an amount determined in accordance with the E.O. in future years) and a credit based on tips received by such employee. (29 CFR 10.24(b) and 10.28) (FAR 22.1902(c) and 52.222-55(b)).

14. Permit a contractor to make deductions that reduce a worker's wages below the E.O. minimum wage rate only if the deduction qualifies as a deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes, or in other limited circumstances specified in the DOL rule. (29 CFR 10.23) (FAR 52.222-55(b)).

15. Establish that wage payments to workers are to be made no later than one pay period following the end of the regular pay period in which the wages were earned, and that a pay period under the E.O. may not be longer than semi-monthly. (29 CFR 10.25) (FAR 52.222-55(b)).

16. Delineate the records to be kept by contractors. These requirements are consistent with existing requirements under the Service Contract Labor Standards statute and the Wage Rate Requirements (Construction) statute. (29 CFR 10.26) (FAR 52.222-55(e)).

17. Require the contractor to notify all workers performing work on, or in connection with, a covered

contract of the applicable minimum wage rate under the E.O. The rule details the authorized means of doing so. (29 CFR 10.29) (FAR 52.222-55(d)).

18. Address enforcement of the E.O. requirements and details the process for filing complaints, investigating complaints, and the remedies and sanctions available for violations. (29 CFR 10.41-10.44) (FAR 22.1905 and 52.222-55(f) and (g)).

19. Address the handling of disputes concerning contractor compliance and identifies the DOL procedures for adjudication. (29 CFR 10.51-10.58) (FAR 52.222-55(h)).

C. FAR implementation of the DOL rule by DoD, GSA, and NASA is discussed below, as well as those instances where the FAR rule differs from the DOL rule, and the rationale for those differences:

1. A new part 22 subpart, FAR 22.19, Establishing a Minimum Wage for Contractors, is added to include the following sections:

a. Scope of subpart. FAR 22.1900 gives the authority citations for the E.O. and DOL regulation.

b. Definition of "Worker". FAR 22.1901 incorporates the DOL definition, updating the statutory

references to reflect the recodification of Titles 40 and 41 of the United States Code (see FAR 1.110).

c. Policy. FAR 22.1902 describes the E.O. minimum wage requirements and the relationship to other wage rates, including other Federal or State prevailing wage rates and collective bargaining agreements that provide a higher wage rate, and to wages of tipped workers. The DOL preamble discussed the relationship of the E.O. minimum wage to minimum wages required in collective bargaining agreements. DoD, GSA, and NASA determined that this information is critical to both contractors and contracting officers and included this information in this policy section and in the contract clause. This issue is addressed, although not in the same manner, in the clause for Service contracts, 52.222-41, Service Contract Labor Standards, but it is not addressed in the clause for Construction contracts, 52.222-6, Construction Wage Rate Requirements.

The DOL rule included a definition of "tipped employees" at 29 CFR 10.2 as well as a discussion of treatment of tipped employees at 29 CFR 10.28. DoD, GSA, and NASA determined that a detailed discussion of tipped employees or a definition is not needed because tipped employees are infrequently employed under FAR-based

contracts, and concluded that reference to 29 CFR 10.24(b) and 10.28 in the FAR rule is adequate coverage.

d. Applicability. FAR 22.1903(a) provides applicability to contracts governed by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and to performance in whole or in part in the United States. The FAR 2.101 definition of "United States," as used in the geographic sense, is used in this rule—the 50 states and the District of Columbia.

FAR 22.1903(b) delineates individuals to whom the subpart applies or does not apply. The subpart does not apply to an individual who performs solely "in connection with" covered contracts for less than 20% of hours worked in a given work week. DOL, in its final rule preamble (79 FR 60634 at 60661), gave helpful examples.

e. Annual Executive Order Minimum Wage Rate. FAR 22.1904, describes DOL's processes to notify the public of the annual E.O. minimum wage rates. The coverage at 22.1904 establishes FAR policy for how price adjustments will be made by contracting officers, when appropriate, after requests for such price adjustments are received from contractors. This coverage provides detail and direction, including examples of how price adjustments are calculated.

The price adjustment language used in the class deviations, which were crafted prior to formal DOL rulemaking, was adequate for that purpose. However, given the fully developed DOL regulation, the price adjustment language in this rule is significantly revised from the deviation language.

The language in this rule will ensure price adjustments under the E.O. minimum wage clause do not duplicate other price adjustments made under the same contract. Only those labor costs, associated labor costs, and relevant subcontract costs directly resulting from the increase in the E.O. minimum wage will be subject to adjustment.

f. Enforcement of Executive Order Minimum Wage Requirements. FAR 22.1905 provides information on enforcement authority, filing complaints, reporting and investigating complaints, remedies and sanctions, and retroactive inclusion of the contract clause when an agency fails to include the clause in a contract to which the E.O. applies.

g. FAR 22.1906 establishes a contract clause prescription for clause 52.222-55, Minimum Wages under Executive Order 13658, when the contracts include 52.222-6,

Construction Wage Rate Requirements, (\$2,000 threshold), or 52.222-41, Service Contract Labor Standards, (\$2,500 threshold) and performance is in whole or in part in the United States.

2. Coverage is added to 22.403-5 and 22.1002-5 by adding new sections discussing the new minimum wage subpart.

3. Coverage is added to part 52 to—

a. Revise the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, to include 52.222-55, Minimum Wages Under Executive Order 13658;

b. Revise the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other than Commercial Items), to include 52.222-55, Minimum Wages Under Executive Order 13658; and

c. Add 52.222-55, Minimum Wages Under Executive Order 13658. This includes coverage of the following:

i. Paragraph (a) definitions of "Worker" and "United States" are provided.

ii. Paragraph (b) includes particular requirements regarding payment to workers of the E.O. minimum wage. It informs contractors that the minimum wage

rate may be adjusted annually, beginning January 1, 2016 and that they are required to pay workers the adjusted rate. The Contractor may request a price adjustment to reflect an increase in wages due to the annual wage rate adjustment. The Contractor must warrant that the prices in the contract do not include any allowance for contingency to cover increased costs for such adjustments. Language for warranting contract price is adapted from existing price adjustment clauses applicable to Service Contract Labor Standards and the FLSA. Other subjects covered in this paragraph (b) are: subcontractor price adjustments, length of pay period, deductions, fringe benefits, relationship to higher minimum wages imposed by other statutes, ordinances, or collective bargaining agreements, and workers who regularly receive tips.

iii. Paragraph (c) informs the contractor which workers the E.O. minimum wage requirement applies to, and to which individuals it does not apply.

iv. Paragraph (d) addresses the requirement for the contractor to notify employees of the E.O. minimum wage rate.

v. Paragraph (e) identifies payroll recordkeeping requirements. It includes a requirement to

make such records available to DOL and the contracting officer; noncompliance with this requirement will result in withholding of contract payment.

vi. Paragraph (f) informs the contractor that it must permit access to DOL to conduct investigations.

vii. Paragraphs (g), (h), and (i) provides information on enforcement of E.O. Minimum Wage requirements including withholding of payment for unpaid wages, resolution of disputes, and a prohibition on retaliation.

viii. Paragraph (j) states that the contractor is responsible for subcontractor compliance with the requirements of the clause and may be held liable for unpaid wages due subcontractor workers. Although the DOL regulation, at 29 CFR 10.21(b) states that the contractor and any upper-tier subcontractors are responsible for subcontractor compliance and shall be liable for any unpaid wages for its workers or its subcontractor workers, DoD, GSA, and NASA have not placed this responsibility on upper-tier subcontractors in this rule because the Government does not have privity of contract with subcontractors.

ix. Paragraph (k) states that the Contractor shall include the substance of the clause, including this

paragraph (k) in all subcontracts, regardless of dollar value, that are subject to 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. The requirement to include the substance of the clause allows only for ministerial changes to the clause. The substance of the clause will be consistent with the requirements of the clause, and will not permit substantive changes such as to the rights and responsibilities of the parties.

4. DoD, GSA, and NASA reviewed the regulations at 29 CFR part 10 including the Appendix A contract clause and determined that adequate coverage for the following issues is accomplished by existing FAR coverage and clauses that are applied to contracts subject to the E.O., therefore inclusion of the following items into FAR clause 52.222-55, Minimum Wages Under Executive Order 13658, is unnecessary:

a. Appendix A, paragraph (d) Contract Suspension/Contract Termination/Contractor Debarment. Suspension and debarment is independently covered in FAR subpart 9.4. Termination is addressed in individual applicable contract clauses.

b. Appendix A, paragraph (i), Certification of Eligibility. This paragraph duplicates coverage in paragraph (p) of FAR clause 52.222-41, Service Contract Labor Standards, for service and 52.222-15, Certification of Eligibility, for construction contracts. 41 U.S.C. 1304 discourages adding certifications to the FAR.

c. Waiver of Rights, states that rights under the DOL rule at 29 CFR 10.7, Waiver of rights, cannot be waived or induced to be waived. With respect to the FAR, the FAR clause requirements become contract requirements, which likewise cannot be waived, thus separate inclusion is unnecessary.

d. 29 CFR 10.24, Overtime payments, restates requirements of the Fair Labor Standards Act and the Contract Work Hours and Safety Standards Acts and thus, it is unnecessary to restate existing requirements.

e. Terms defined in 29 CFR 10.2, Definitions, include "new contract". The FAR rule did not adopt this definition as not all the elements of the definition apply to or are consistent with FAR principles. When FAR rules apply to existing contracts, application is addressed in the Effective Date/Applicability section of the preamble, not in the Code of Federal Regulations; treatment of

bilateral modifications to existing contracts is addressed in the Applicability section at the beginning of this preamble. In discussing treatment of existing contracts DOL stated in the preamble of its rule, "if parties bilaterally negotiate a modification that is outside the scope of the contract, the agency will be required to create a new contract, triggering solicitation and/or justification requirements, and thus such a modification after January 1, 2015 should be addressed as a new contract subject to the Executive Order". We understand this to refer to the long-standing requirement for any out-of-scope modification to be addressed as a new procurement and conducted in accordance with the requirements of FAR part 6, Competition Requirements.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing

rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

This rule revises the Federal Acquisition Regulation (FAR) to include procurement policy implementing Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and associated Department of Labor regulatory requirements at 29 CFR Part 10. The Department of Labor (DOL) published an initial regulatory flexibility analysis of the minimum wage requirement in its Notice of Proposed Rulemaking (79 FR 34568 at 34602) June 17, 2014. On October 7, 2014 DOL published the final regulatory flexibility analysis in the final rule (79 FR 60634 at 60704).

This rule applies to contracts awarded under FAR procedures and covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67; see FAR subpart 22.10), including contracts for the acquisition of commercial services, and the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31 subchapter IV; see FAR subpart 22.4). The FAR rule does not apply to certain contracts, such as concession contracts, which may be covered by the DOL rule and the E.O. but are not FAR contracts. FAR 1.104 addresses the applicability of the FAR to Federal acquisitions. FAR 2.101 states "acquisition" means the "acquiring by contract with appropriated funds of supplies or services...".

The objective of this rule is to implement Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and associated Department of Labor regulatory requirements at 29 CFR Part 10.

The rule establishes requirements for contractors under contracts containing the clauses at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Labor Standards, i.e. "covered contracts", to pay no less than the applicable E.O. minimum wage to workers for all hours worked on or in connection with a covered contract. Contractors must also include a minimum wage contract clause in covered subcontracts and require covered subcontractors to include the substance of the clause in covered lower-tier contracts.

This rule applies to contracts and subcontracts at all tiers covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute, which require performance in whole or in part within the United States. When performance is in part within and in part outside the United States, the rule applies to the part of the contract or subcontract performed within the United States.

This rule applies to workers as defined at 22.1901. As provided in that definition—

1. Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

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

3. 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.

This rule does not apply to—

Fair Labor Standards Act (FLSA)-covered individuals performing in connection with covered contracts, 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;

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); and

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

Small businesses in the service or construction industry with FAR-based contracts or subcontracts awarded after the effective date of this rule will be impacted unless an exclusion listed above applies. The rule will require these contractors and subcontractors to raise their employees' minimum hourly rate to \$10.10 per hour, beginning January 1, 2015, then annually adjust it thereafter, if necessary, based on the annual minimum wage rate determined by the DOL.

Data available through the Federal Procurement Data System (FPDS) for Fiscal Year 2013, reveals 16,264 contracts were awarded to unique small business vendors for services which contained the clause at 52.222-41, Labor Standards. Additionally, 5,211 contracts were awarded to unique small business vendors for construction which contained the clause at 52.222-6, Construction Wage Rate Requirements, for a total of 21,475 unique small businesses. Subcontract data is available from the USASpending Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS), however this system does not distinguish small businesses from other than small businesses. Data for Fiscal Year 2013 shows there were a total of 20,127 subcontracts for services and construction reported and of those 5,391 were unique DUNS. These 5,391 first tier unique subcontracts are approximately 25% of the 21,475 unique contracts. Given that first tier subcontracts account for 25%, then for estimating purposes, 20% of subcontracts have a second-tier, 10% of second tier have a third tier, and 5% of third tier have a fourth tier. This calculation estimates the total number of subcontracts is 6,631. However, since the FSRS does not distinguish small businesses, this number is overestimated. Data from FPDS has shown that typically, approximately 60% of a contractor population is small.

The DOL noted in their final rule (79 FR 60634 at 60691) that the rule did not impose any additional notice or recordkeeping requirements on contractors and therefore, the burden for complying with the recordkeeping requirements was not adjusted. However, DOL submitted a revised information collection request (ICR), to OMB to revise the existing ICR for control number 1235-0018 to incorporate the recordkeeping regulatory citations in its final rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule that would meet the requirements of the E.O. and DOL regulation and minimize any significant economic impact of the rule on small entities.

DOL, in its final rule, estimated the average wage for affected employees is \$8.79; thus affected firms must raise the hourly wage for affected employees by \$1.31 per hour. Additionally, contractors must adjust related payroll and unemployment taxes and fringe benefits. Under covered contracts, contractors are entitled to recover increases in labor costs resulting from the E.O. minimum wage requirements by including such costs in offers and when requesting contract price adjustment under existing and future contracts for the additional costs related to the increase in the minimum wage rate for workers performing under the contract. DOL notes increases in economy and efficiency and expects these added costs to be offset by an increase in employee morale and productivity, reduced absenteeism, reduced supervisory costs, and reduced turnover.

To remind contractors of their obligation in ensuring subcontractor workers are paid in compliance with the minimum wage requirement, the following was added at the FAR clause 52.222-55:

1. The contractor is responsible for subcontractor compliance with the requirements of this subpart, and may be held liable for unpaid wages due subcontractor's workers.

2. The rule provides that subcontractors may be entitled to adjustments due to the new minimum wage and that contractors shall consider any subcontractor(s) requests for such price adjustment.

The rule does not address late payments to small business subcontractors, however pending FAR case 2014-004 implements section 1334 of the Small Business Jobs and Credit Act of 2010 (Public Law 111-240) and the Small Business Administration's final rule at 78 FR 42391. The

rule will require a contractor to self-report to the contracting officer when the contractor makes late or reduced payments to small business subcontractors.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2015-003), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Number 1235-0018, Records to be kept by Employers - Fair Labor Standards Act.

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the E.O. requires DoD, GSA, and NASA to issue regulations within 60 days of the DOL rule, and include a clause which specifies the new \$10.10 per hour minimum wage will be paid to workers beginning January 1, 2015. The DOL final rule was published October 7, 2014. The DOL rule was published for public comment prior to publication of the final rule. However, pursuant to 41 U.S.C. 1707, DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: **December 5, 2014.**

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, the DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106, in the table following the introductory text, by—

a. Removing the FAR Segment "52.222-8" and its corresponding OMB control numbers "1215-0149 and 1215-0017" and adding "52.222-8" and "1235-0008 and 1235-0018" in their places, respectively;

b. Removing the FAR segment "52.222-41" and its corresponding OMB control numbers "1215-0017 and 1215-0150" and adding "52.222-41" and "1235-0018 and 1235-0007" in their places, respectively; and

c. Adding in numerical sequence, FAR segment "52.222-55" and its corresponding OMB Control No. "1235-0018".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

3. Amend section 22.001 by adding, in alphabetical order, the definition "Agency labor advisor" to read as follows:

22.001 Definitions.

* * * * *

Agency labor advisor means an individual responsible for advising contracting agency officials on Federal contract labor matters.

* * * * *

4. Amend section 22.403 by revising the heading to read as follows:

22.403 Statutory, Executive Order, and regulatory requirements.

* * * * *

5. Add section 22.403-5 to read as follows:

22.403-5 Executive Order 13658.

Executive Order 13658 establishes minimum wages for certain workers. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222-55, Minimum Wages under Executive Order 13658, requires the Executive Order 13658 minimum wage rate to be paid if it is

higher than other minimum wage rates, such as the subpart 22.4 statutory wage determination amount.

22.1001 [Amended]

6. Amend section 22.1001 by removing the definition "Agency labor advisor."

7. Amend section 22.1002 by revising the section heading to read as follows:

22.1002 Statutory and Executive Order requirements.

* * * * *

8. Add section 22.1002-5 to read as follows:

22.1002-5 Executive Order 13658.

Executive Order 13658 establishes minimum wages for certain workers. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222-55, Minimum Wages under Executive Order 13658, requires the Executive Order 13658 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.10 statutory wage determination amount.

9. Add subpart 22.19 to read as follows:

SUBPART 22.19—Establishing a Minimum Wage for Contractors

Sec.

22.1900 Scope of subpart.

22.1901 Definition.

- 22.1902 Policy.
- 22.1903 Applicability.
- 22.1904 Annual Executive Order Minimum Wage Rate.
- 22.1905 Enforcement of Executive Order Minimum Wage Requirements.
- 22.1906 Contract clause.

Subpart 22.19 Establishing a Minimum Wage for Contractors

22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and Department of Labor (DOL) implementing regulations at 29 CFR part 10.

22.1901 Definition.

Worker, as used in this subpart, (in accordance with 29 CFR 10.2)–

(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.

22.1902 Policy.

(a) Pursuant to Executive Order 13658, the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts and subcontracts subject to this subpart is at least \$10.10 per hour beginning January 1, 2015, and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor. The Administrator of the Wage and Hour

Division (the Administrator) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See 22.1904.)

(b) Relationship with other wage rates. (1) Nothing in this subpart shall excuse noncompliance 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.

(2) The E.O. minimum wage rate applies whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(c) Application to tipped workers. Policies and procedures in DOL regulations at 29 CFR 10.24(b) and 10.28 address the relationship between the E.O. minimum wage and wages of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

22.1903 Applicability.

(a) This subpart applies to contracts covered by the Service Contract Labor Standards statute (41 U.S.C. chapter

67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4), that require performance in whole or in part within the United States (the 50 states and the District of Columbia). When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States.

(b)(1) This subpart applies to workers as defined at 22.1901. 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 subpart 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); and

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

(c) Agency Labor Advisors, as defined at 22.001, are listed at <http://wdol.gov>, and are available to provide guidance and assistance with the application of this subpart.

22.1904 Annual Executive Order Minimum Wage Rate.

(a) For the E.O. minimum wage rate that becomes effective on January 1, 2016, and annually thereafter, the Administrator will—

(1) Notify the public of the new E.O. minimum wage rate at least 90 days before it becomes effective by publishing a notice in the Federal Register;

(2) Publish and maintain on Wage Determinations OnLine (WDOL), <http://www.wdol.gov>, or any successor site, the E.O. minimum wage rate; and

(3) Include a general notice on wage determinations which are issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The notice will provide information on the E.O. minimum wage and how to obtain annual updates.

(b) (1) The contractor may request a price adjustment only after the effective date of a new annual E.O. minimum wage determination published pursuant to paragraph (a). Prices will be adjusted only if labor costs increase as a result of 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.

(2) The wage rate price adjustment under this clause is the amount calculated by subtracting from the new E.O. wage rate the highest of the following: the previous E.O. minimum wage rate; the current Service or Construction wage determination rate under the contract; or the actual wage paid the worker prior to the new minimum wage. If the amount is zero or below, there will be no price adjustment for this worker.

(i) Example 1 - New E.O. wage rate is \$11.10.	
Previous E.O. wage rate is \$10.70.	Analysis: The calculation is \$11.10 - \$10.80 = \$.30. The price
The current Service or Construction wage determination rate under the contract is \$10.75.	

The actual wage paid to the worker prior to the new minimum wage is \$10.80.	adjustment for this worker is \$.30.
(ii) Example 2 - New E.O. wage rate is \$10.50.	
Previous E.O. wage rate is \$10.10.	Analysis: The calculation is $\$10.50 - \$10.80 = -\$0.30$. There is no price adjustment for this worker.
The current Service or Construction wage determination rate under the contract is \$10.75.	
The actual wage paid to the worker prior to the new minimum wage is \$10.80.	

(3) The contracting officer shall not adjust the contract price for any costs other than those identified in paragraph (b)(1) of this section, and shall 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.

22.1905 Enforcement of Executive Order Minimum Wage Requirements.

(a) Authority. (1) Section 5 of the E.O. grants the authority for investigating potential violations of, and

obtaining compliance with, the E.O. to the Secretary of Labor. The Secretary of Labor, in promulgating the implementing regulations required by Section 4 of the E.O., has assigned this authority to the Administrator. Contracting agencies do not have authority to conduct compliance investigations under 29 CFR part 10 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.

(2) Contracting officers shall withhold payment at the direction of the Administrator, or upon the contracting officer's own action, if the contractor fails to comply with the requirements in paragraph (e)(2) of 52.222-55, Minimum Wages Under Executive Order 13658, until such time as the noncompliance is corrected.

(b) Complaints. (1) Complaints may be filed with the contracting officer or the Administrator by any person, entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual 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 individual's identity, shall not be

disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) Upon receipt of a complaint, or if notified that the Administrator has received a complaint, the contracting officer shall report the following information, within 14 days, if available without conducting an investigation, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue N.W., Room S3006, Washington, D.C. 20210.

(i) The complaint or description of the alleged violation;

(ii) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(iii) Evidence that clause 52.222-55, Minimum Wages Under Executive Order 13658, was included in the contract;

(iv) Information concerning known settlement negotiations between the parties, if applicable; and

(v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) Investigations. Complaints will be investigated by the Administrator, if warranted, in accordance with the procedures in 29 CFR part 10.43.

(d) Remedies and sanctions—(1) Unpaid wages. When the Administrator's investigation reveals that a contractor has failed to pay the applicable E.O. minimum wage, the Administrator will notify the contractor and the contracting agency of the unpaid wage violation, and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator may direct withholding of payments due on the contract or any other contract between the contractor and the Federal Government. Upon final decision and direction of the Administrator, the contracting agency shall transfer the withheld funds to the Department of Labor for disbursement in accordance with the procedures at 22.406-9(c).

(2) Antiretaliation. When a contractor has been found to have violated paragraph (i) of clause 52.222-55, Minimum Wages Under Executive Order 13658, the Administrator may provide for relief to the worker in accordance with 29 CFR 10.44.

(3) Debarment. (i) The Department of Labor may initiate debarment proceedings under 29 CFR 10.52 whenever

a contractor is found to have disregarded its obligations under 29 CFR part 10.

(ii) Contracting officers shall consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart.

(4) Retroactive inclusion of contract clause. If a contracting agency fails to include the contract clause in a contract to which the E.O. applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

22.1906 Contract clause.

Insert the clause at 52.222-55, Minimum Wages Under Executive Order 13658, in solicitations and contracts that

include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend 52.212-5 by—

- a. Revising the date of the clause;
- b. Adding paragraph (c)(10);
- c. Adding paragraph (e)(1)(xvii); and
- d. Revising the date of Alternate II; and adding paragraph (e)(1)(ii)(O).

The revisions and additions read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS—COMMERCIAL ITEMS ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER.])

* * * * *

(c) * * *

(10) 52.222-55, Minimum Wages Under Executive Order 13658 (**[Insert abbreviated month and year of publication in the Federal Register.]**) (Executive Order 13658).

* * * * *

(e) (1) * * *

(xvii) 52.222-55, Minimum Wages Under Executive Order 13658 ([Insert abbreviated month and year of publication in the Federal Register]) (Executive Order 13658).

* * * * *

Alternate II ([Insert abbreviated month and year of publication in the Federal Register])

* * * * *

(e) (1) (ii) * * *

(O) 52.222-55, Minimum Wages Under Executive Order 13658 ([Insert abbreviated month and year of publication in the Federal Register]) Executive Order 13658).

* * * * *

11. Amend 52.213-4 by revising the date of the clause; and adding paragraph (b) (1) (xv) to read as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other than Commercial Items)**

* * * * *

**TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL
REGISTER])**

* * * * *

(b) (1) * * *

(xv) 52.222-55, Minimum Wages Under Executive Order 13658 (**[Insert abbreviated month and year of publication in the Federal Register]**) (Executive Order 13658) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia.)

* * * * *

12. Add section 52.222-55 to read as follows:

52.222-55, Minimum Wages Under Executive Order 13658.

As prescribed in 22.1906, insert the following clause:

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 ([Insert abbreviated month and year of publication in the Federal Register]**)**

(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)

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