



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
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WASHINGTON DC 20350-1000

AUG 18 2011

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Contracting for Construction Requirements in Nonconstruction Contracts

Recent inquiries from the Department of Labor (DOL) to this office about non-compliance with Davis-Bacon Act (DBA) requirements under Department of the Navy (DON) contracts for supplies, equipment or services containing construction-related work raise concerns that DON contracting officers may not be fully aware of the unique statutory labor standards affecting these contracts and the consequences of noncompliance. This memorandum (1) restates the DON's policy on construction contracting authority, and (2) reinforces the policies and preliminary procedures governing nonconstruction contracts involving some construction meeting the conditions at Federal Acquisition Regulation (FAR) 22.402(b).

If a contract requires any construction activity, there exists the possibility that DBA applies, even though the contract is primarily for other items (*e.g.* for supplies, services, research and development) and is funded with other than military construction funds (*e.g.* operation and maintenance funds under 10 U.S.C. § 2805). Construction is broadly defined in FAR 2.201 as "construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property...". The terms "buildings, structures, or other real property" include, but are not limited to "...improvements of all types, such as bridges, dams, plants, ...". For applicability of labor standards for contracts involving construction, FAR 22.401 further defines "construction, alteration, or repair" as all types of work done by laborers and mechanics, including but not limited to, altering, remodeling, installing items on site that were fabricated off-site, painting, decorating, manufacturing or furnishing materials, articles, supplies or equipment to the site, transporting materials and supplies between the site of the work and a facility, and transporting portions of the building or work between the primary and a secondary site.

NMCARS 5201.601-90 designates Commander, Naval Facilities Engineering Command (COMNAVFAC) as the DON's Head of Contracting Activity (HCA) with construction contracting authority. COMNAVFAC is responsible for awarding and administering DON construction contracts. This authority includes administering portions of construction work under nonconstruction contracts awarded by other contracting activities. As early as practicable in the acquisition process, contracting officers shall consult with the NAVFAC Acquisition Directorate to ensure that solicitations for nonconstruction requirements involving any construction work are properly structured,

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and the contract work administered, in accordance with DBA requirements and DON policy. NAVFAC will decide whether the extent of construction activities to be performed under a nonconstruction contract triggers the application of FAR Subpart 22.4, Labor Standards for Contracts Involving Construction. The NAVFAC point of contact for this consult is Cindy Readal, available at cindy.readal@navy.mil or (757) 322-8235.

COMNAVFAC may delegate to a contracting officer from another contracting activity one-time authority to perform construction contract administration functions under a nonconstruction contract, only if the contracting officer's written request demonstrates that the contracting activity has assigned contracting officers and technical/program personnel properly trained in construction contract administration, including DBA requirements, for the proposed contract action. COMNAVFAC shall submit a copy of any delegation document to DASN(AP) by electronic mail address RDAPolicy@navy.mil within five calendar days of issuance.

At a minimum, contracting officers shall ensure that solicitations and contracts containing DBA-covered work:

- include applicable contract clauses prescribed in FAR 22.407;
- incorporate applicable wage determinations in the solicitation, contract, and task/delivery order, as appropriate;
- identify the portions of construction work in the contract or task/delivery order to which DBA wage determinations will apply, as appropriate;
- establish separately priced contract line items for DBA covered work; and,
- if NAVFAC retains construction contract administration functions, include appropriate language in the pertinent contract administration section of the contract and delivery/task order identifying which NAVFAC Field Contracts Activity/Office will administer the construction work identified as meeting the conditions of FAR 22.402(b)(1).

DOL has published the following resources which provide additional guidance on labor standards for contracts containing construction-related work:

- The Field Operations Handbook from the Wage and Hour Division, available at http://www.dol.gov/whd/FOH/FOH_Ch15.pdf. See Section 15d13, which discusses "Supply and installation contracts."
- The Prevailing Wage Resource Book, available at <http://www.dol.gov/whd/recovery/pwrp/Tab2Coverage.pdf>. See section titled "Interaction Among the Government Contracts Labor Standards Statutes" starting on page 24 (or page 26 of 32 of the online document) which provides examples of contract requirements affected by multiple labor standards.

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To effectively implement this policy in the DON, this office will lead a working group of HCA subject-matter-experts in defining and completing a common process within 120 calendar days from the date of this memorandum. To assist with this effort, please identify individuals (no more than two) from your contracting and program management/technical staff who will collaborate on or provide support to this working group. Provide their contact information (*i.e.* name, position/title, telephone, email address) to my action officer, Evelyn Ortiz, available at evelyn.ortiz@navy.mil or (703) 614-9640.



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