

Davis Bacon & Service Contract Act

PART 10 LABOR LAWS

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10.1 AUTHORITIES OF THE SECRETARY OF LABOR.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as--

- (a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);
- (b) Wage determination procedures (29 CFR Part 4, Subpart B);
- (c) Application of the Act (rulings and interpretations) (29 CFR Part 4, Subpart C);
- (d) Compensation standards (29 CFR Part 4, Subpart D);
- (e) Enforcement (29 CFR Part 4, Subpart E);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);

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(g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and

(h) Practice before the Board of Service Contract Appeals (29 CFR Part 8).

10.2 GENERAL

10.2.1 Definitions

"Act" may refer to either the "Service Contract Act of 1935, as Amended", or "Davis Bacon Act" depending on which subpart is being referenced.

"Contractor," as used in this subpart, includes a subcontractor at any tier whose subcontract is subject to the provisions of the Act.

Construction - "Construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as electrical substations, maintenance facilities, fish hatcheries, office facilities, bridges, dams, roads, sewers, water mains, power lines, pumping stations, railways, airport facilities, and terminals. Construction does not include exploratory drilling or other investigative work which is intended to obtain preliminary data for engineering studies and which is not a part of commencing or continuing the construction process; nor does it include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of personal property, or demolition without construction.

"Laborers or mechanics," includes --

(a) Apprentices, trainees, helpers, watchmen and guards;

(b) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(c) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals. The terms exclude workers whose duties are primarily executive, supervisory (except as provided in paragraph (c) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics.

"Public building" or "public work," means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

"Service contract," as used in this subpart, means any Government contract, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted under section 7 of the Act (41 U.S.C. 356), or any subcontract at any tier there under.

"Service employee" means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations.

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"Site of the work," is defined as follows:

- (a) 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 is completed, and nearby property, as described in paragraph (b) of this definition, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."
- (b) Except as provided in paragraph (c) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts 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.
- (c) The "site of work" 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 supplier or material handler which are established by a supplier of materials for the project before proposals are received and are not on the project site, are not included in the "site of work." Such permanent, previously-established facilities are not a part of the "site of the work," even if their operations may for a period of time, be dedicated exclusively, or nearly so, to the performance of a contract.

"Wage and Hour Division" means the unit in the Employment Standards Administration of the Department of Labor to which functions of the Secretary of Labor are assigned under the Act.

"Wage determination" means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the Act (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

"Wages," means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal State, or local law.

10.2.2 General Labor Policies

- (a) BPA is responsible for ensuring full and impartial enforcement of the labor standards in the administration of our contracts. BPA shall maintain an effective program that ensures that contractors, and subcontractors, carry out their obligations under the labor standards clauses.
- (b) BPA will show no preference for either union or non-union contractors.
- (c) BPA will remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. COs, and their representatives, shall refrain from discussing with the contractor, or any labor representative, any

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aspect of their collective bargaining agreements which may require revision to enable compliance with terms of BPA contract. They shall be referred to the Department of Labor (DOL). BPA's Manager for Labor Management Relations should be advised of the referral.

(d) BPA will exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(e) BPA will notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting, or threatening to affect, BPA purchase programs.

(f) BPA will prohibit its contractors from discriminating due to age, race, color, religion, sex, or national origin and will promote affirmative action for Equal Employment Opportunity (41 CFR 60), Disabled and Vietnam Veterans and the Handicapped.

(g) A delay caused by a strike may be excusable if the strike was unforeseeable at time of award and the contractor and its subcontractors act in good faith and in a lawful manner to end the strike. (See BPI clause 20-3, Termination for Default).

(h) The CO shall promptly refer, in writing, to the appropriate regional office of the DOL, (1) any complaints received, (2) any apparent violations which have significant impact, (3) any recurring violations and (4) any failures to promptly correct identified violations. When there is question of whether a contractor's performance is in violation or not, the matter shall be discussed with the regional office of the DOL. Any contractor employee complaints received shall not be discussed directly with the employer.

(i) See BPI Subpart 3.7 for related BPA policies, such as Harassment-Free Workplace, which will be applied to contracts at BPA worksites.

10.3 GENERAL LABOR CLAUSES.

PROCEDURE:

(a) The Secretary of Labor has issued regulations in Title 29, Subtitle A, Code of Federal Regulations, prescribing standards and procedures to be observed by the Department of Labor and the Federal contracting agencies. Those standards and procedures are implemented here and in Appendix 10-A, Labor Laws and Procedures.

(b) The CO shall not attempt to investigate or resolve complaints received from individuals without specific instruction from the HCA.

10.3.1 Clause Usage Prescriptions.

PROCEDURE:

The CO shall include the clause at 10-1, Nondiscrimination and Affirmative Action, in all solicitations and contracts except those (1) with individuals (as opposed to a firm with multiple employees), or (2) on or within 40 miles of an Indian reservation where a Tribal Employment Rights Ordinance (TERO) is known to be in effect.

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10.4 LABOR POLICIES FOR SERVICE CONTRACTS.

10.4.1 General.

INFORMATION: This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, (41 U.S.C. 351, et seq.), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925). (See Appendix 10-A for procedural matters.)

10.4.2 Applicability.

(a) **INFORMATION:** This subpart applies to those BPA contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted below. The nomenclature, type, or particular form of contract used is not determinative of coverage.

(b) **INFORMATION:** The Act does not apply to any purchase:

- (1) valued at less than \$2,500;
- (2) for construction, alteration, or repair of public buildings or public works, including painting and decorating;
- (3) for dismantling, demolition or removal of improvements when purchased as part of a construction contract (see BPI 24.3);
- (4) for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;
- (5) any contract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- (6) for public utility services;
- (7) with an individual (rather than a firm with multiple employees);
- (8) principally established for the maintenance, calibration or repair of certain items of ADP, scientific, medical, and office/business equipment; or
- (9) where the predominant purpose is to provide executive, administrative or professional services as defined in 29 CFR 541. (<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=706565b5cfc4185d1a9eba7e3d332b14&rqn=div5&view=text&node=29:3.1.1.1.22&idno=29>)

(c) **PROCEDURE:** Requests for limitations, variances, tolerances, and exemptions from the Act shall be drafted by the CO and submitted through the performance manager and the HCA to the DOL.

10.4.3 Policy.

Service contracts shall contain appropriate provisions regarding minimum wages and health and welfare benefits, safe and sanitary work conditions and notification to employees of the minimum allowable compensation.

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10.4.4 Clause Usage Prescriptions for Service Contracts.

PROCEDURE:

- (a) The CO shall include the clause at 10-2, Employment Practices, in all solicitations and contracts.
- (b) The CO shall include the clause at 10-3, Service Contract Act of 1965, in solicitations and contracts if the purchase is subject to the Act (see 10.4.2(b) for exemptions).
- (b) The CO shall include a clause similar to 10-4, Labor Standards -- Price Adjustment, in solicitations and contracts if the contract is expected to be a firm-fixed-price, or time-and-materials, service contract subject to the Service Contract Act of 1965, and has a period of performance exceeding two years or will include option(s) for which a differing wage determination will apply. If an economic price adjustment clause such as clause 7-2, Pricing Adjustment, is also used, the clauses must be edited to protect against duplication of labor-related price adjustments.
- (c) The CO shall include the clause at 10-5, Wage Determination, in solicitations and contracts which are subject to the Service Contract Act of 1965 when the wage determination will be attached to the solicitation and contract.

10.5 LABOR POLICIES FOR CONSTRUCTION CONTRACTS.

10.5.1 Information:

Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 U.S.C. 351-357) or the Davis-Bacon Act (40 U.S.C. 276a - 276a-7). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies, unless further work involving construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, regardless of whether or not it falls under the same contract or is to be performed by BPA forces, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

10.5.2 Applicability.

INFORMATION:

- (a) Requirements of this subpart are applicable to:
- (1) Construction work that is to be performed by laborers and mechanics on a public building or public work site (See 10.2.1 for the definition of Construction);
 - (2) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same, or separate, contract or by BPA forces;
 - (3) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site; and,
 - (4) Painting of either public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.
 - (5) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work.

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(b) The requirements of this subpart do not apply to:

(1) The manufacturing or fabrication of components or materials, off the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;

(2) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development.

(3) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(4) Employees who work at the contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. When employees go to the work site and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel. However, the travel time is included when the employees transport materials or supplies to and from the site of the work.

10.5.3 Application to Contracts Other Than Construction.

INFORMATION:

(a) The requirements of this subpart apply to construction work to be performed as part of contracts other than construction (supply, service, research and development, etc.) if --

(1) The construction work is to be performed on a public building or public work;

(2) The contract contains a significant amount of construction work exceeding \$2,000 in value (the word "significant" relates to the construction work considered on its own rather than merely a value comparison of the construction work as compared to the total value of the contract); and

(3) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(b) The requirements of this subpart do not apply if --

(1) The construction work is incidental to the furnishing of supplies, equipment, or services.

(2) The construction work is so merged with non-construction work, or so fragmented in terms of the locations or time spans within which it is to be performed, that it cannot be segregated as a separate contractual requirement.

10.5.4 Pertinent Laws.

(a) The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, will require that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

(b) The Copeland ("Anti-Kickback") Act, as amended, (18 U.S.C. 874 and 40 U.S.C. 276c) and its implementing regulations (29 CFR Part 3) require a contractor to have reasonable procedures in place to prevent and detect unlawful practices to induce, by force, intimidation, threat of

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dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment.

10.5.5 Clause Usage Prescriptions for Construction.

(a) The CO shall include the following clauses in solicitations, contracts and releases for construction as appropriate:

- (1) 10-7, Davis-Bacon Act
- (2) 10-8, Withholding -- Labor Violations
- (3) 10-9, Payrolls and Basic Records
- (4) 10-10, Apprentices, Trainees and Helpers
- (5) 10-11, Subcontracts (Labor Standards)
- (6) 10-12, Certification of Eligibility
- (7) 10-13, Davis-Bacon Act Wage Rates

(b) The CO shall include the clause 10-14, Approval of Wage Rates, in solicitations and contracts in excess of \$2,000 for construction where labor is provided on a cost-reimbursement basis.

(c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed. If, as discussed in Subpart 10.4.2, requirements are segregable as construction work, the CO shall include in such solicitations and contracts the applicable construction labor clauses required in this section and identify the item or items of the contract schedule to which the clauses apply.

10.6 EQUAL EMPLOYMENT OPPORTUNITY (EEO).

10.6.1 EEO Policies.

(a) BPA will ensure compliance with the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin. (See Executive Order 11246.)

(b) Neither BPA, nor its contractors, will solicit, or contract, in a manner to avoid applicability of the Nondiscrimination and Affirmative Action or Equal Opportunity provisions of this Part.

(c) Contractor disputes related to EEO compliance which shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR 60-1.1).

(d) An inquiry from a contractor regarding status of its compliance with Executive Order 11246, or rights of appeal, shall be referred to the Office of Federal Contract Compliance Program's (OFCCP) area office.

(e) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with Executive Order 11246, shall be referred to the OFCCP area office.

(f) Complaints received by the CO alleging violation of the Equal Opportunity clause shall be referred immediately to the appropriate OFCCP area office. The complainant shall be advised in

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writing of the referral. The prime contractor or subcontractor that is the subject of a complaint shall not be advised in any manner, or for any reason, of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

(g) In resolving complaints the CO will comply with the written direction of the OFCCP unless otherwise authorized by the HCA.

(h) Prior to performance of an applicable contract, the CO shall furnish to the prime contractor appropriate quantities of OFCCP Equal Employment Opportunity posters.

(i) Information about OFCCP publications, area office addresses and telephone numbers is available on OFCCP's internet homepage at http://www.dol.gov/dol/esa/public/ofcp_org.htm.

10.6.2 Exceptions.

INFORMATION: The requirements of Executive Order 11246 need not be included in contracts for the following:

(a) Work performed outside the United States by employees who were not recruited within the United States.

(b) State or local governments or any agency, instrumentality or subdivision thereof.

(c) Work on or within 40 miles of an Indian reservation where a TERO is known to be in effect.

(d) Work performed by individuals (i.e., no employees).

10.6.3 Implementation.

(a) Other than Construction contracts.

(1) **POLICY:** A pre-award clearance shall be obtained from the OFCCP area office for contracts and subcontracts of \$10,000,000 or more in total contract value including options. A pre-award clearance shall also be obtained if an award of a modification of a contract will increase its value to \$10,000,000 or more.

(2) **PROCEDURE:** In requesting the clearance, the CO shall provide the following information:

(A) Name, address, telephone number and any known corporate affiliation of the apparent prime contractor and any known subcontractors where their subcontract is expected to exceed \$10,000,000;

(B) whether the prime or first tier subcontractor have held previous federal contracts or applicable subcontracts;

(C) the places of contemplated performance; and

(D) the period of performance.

Requisitioners shall provide up to 35 calendar days for OFCCP processing of an EEO compliance clearance request. OFCCP must within 15 calendar days after the CO's clearance request, notify the CO of its intention to conduct a pre-award clearance evaluation. If OFCCP does not inform the CO within this 15 calendar day period of its intention to conduct a pre-award compliance review, an affirmative clearance shall be presumed and the

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CO may proceed with award. Provided, however, that if OFCCP informs the CO within this 15 calendar day period of its intent to conduct a pre-award compliance evaluation, the CO must withhold award for a period not to exceed 20 calendar days after the date of notice from OFCCP. If OFCCP does not inform the CO of its conclusions within that 20 calendar day period, clearance shall be presumed and the CO may proceed with award.

If waiting for the pre-award clearances would delay award of an urgent and critical contract beyond the time necessary to make award, the CO may proceed with award, documenting the reasons for the decision in the contract file. The OFCCP area office shall be notified immediately of the award. If upon completion of their review OFCCP finds the contractor or subcontract not eligible for a federal contract award, the HCA will determine BPA's course of action.

(b) Construction Contracts.

(1) **POLICY:** Construction contractors shall be required to meet the contract terms and conditions which cite affirmative action requirements covering specified geographical areas or projects, and applicable requirements of 42 CFR 60-1 and 60-4.

(2) **PROCEDURE:** COs shall give written notice to the appropriate OFCCP area office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed.

(3) **PROCEDURE:** When requested by the OFCCP area office, the CO shall arrange a conference among contractor, BPA's contracting personnel and EEO Contract compliance personnel to discuss the contractor's compliance responsibilities.

10.6.4 Clause Usage Prescriptions for EEO.

(a) The CO shall include Clause 10-15, Pre-award On-Site Equal Opportunity compliance Review, in all solicitations (except for construction) valued in excess of \$10,000,000 except those
(1) with individuals (as opposed to a firm with multiple employees); or
(2) on or within 40 miles of an Indian reservation where a TERO is known to be in effect.

(b) The CO shall include Clause 10-16, Affirmative Action Compliance Requirements for Construction, in all construction solicitations and contracts exceeding \$100,000. The percentage goal must be inserted by the CO. Goals are published periodically in the Federal Register.

(c) The CO shall include Clause 10-17, Equal Opportunity Pre-award Clearance of Subcontracts, in all solicitations and contracts (except for construction) when there is a reasonable opportunity for a subcontract exceeding \$10,000,000 except as set forth in BPI 10.6.3.

10.7 EQUAL EMPLOYMENT OPPORTUNITY (E-VERIFY).

10.7.1 Information.

Executive Orders 12989 and 13465 instruct Federal departments and agencies that enter into contracts to require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of all persons hired during the contract term by the contractor to perform employment duties within the United States and all persons assigned by the contractor to perform work within the United States on the Federal contract.

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10.7.2 E-verify Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States (see www.dhs.gov/E-Verify). However, it is not a substitute for any other employment eligibility verification requirement.

(b) Contracting Officers shall include in solicitations and contracts, requirements that Federal contractors must:

(1) Enroll as Federal contractors in E-verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the United States, except that the contractor may choose to verify only new hires assigned to the contract if:

(A) The awardee is a non-federal governmental entity: State or local governments, publicly-owned colleges or universities, federally recognized Indian tribes, special districts (i.e., PUD's, water districts, school districts); or

(B) The contractor is:

(i) an private (non-States) institute of higher education, or

(ii) a surety performing under a takeover agreement entered into pursuant to a performance bond.

(3) Use E-verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements in subcontracts for:

(A) Services other than commercial services that are part of the purchase of a commercial-of-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item;

(B) Construction.

(c) In exceptional cases, the HCA may waive the E-Verify requirement for a contract or subcontract or a class of contracts or subcontracts, either temporarily or for the period of performance. This waiver authority may not be delegated.

(d) By registering with E-Verify, contractors are entering into a Memorandum of Understanding (MOU) with the Department of Homeland Security (DHS). DHS and the Social Security Administration (SSA) may terminate a contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminate a contractor's MOU, the terminating agency must refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (a) of clause 10-18. If the contractor is suspended or debarred as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor, then the contractor must reenroll in E-Verify.

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10.7.3 Clause Usage Prescriptions for E-Verify.

PROCEDURE:

(a) The CO shall insert clause 10-18, Employment Eligibility Verification, in all solicitations and contracts and IGCs exceeding \$100,000, except those that:

- (1) Are for work that will be performed outside the United States;
- (2) Are for a period of performance of less than 120 days;
- (3) Are only for COTS items, including commercial services that are part of the purchase of a commercial-of-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item; or
- (4) Are with other U.S. federal government agencies.

10.50 TEXT OF CLAUSES.

The following clauses are referred to in BPI Part 10:

- 10-1 Nondiscrimination and Affirmative Action
- 10-2 Employment Practices
- 10-3 Service Contract Act of 1965
- 10-4 Labor Standards -- Price Adjustment
- 10-5 Wage Determination
- 10-6 RESERVED
- 10-7 Davis-Bacon Act
- 10-8 Withholding -- Labor Violations
- 10-9 Payrolls and Basic Records
- 10-10 Apprentices, Trainees and Helpers
- 10-11 Subcontracts (Labor Standards)
- 10-12 Certification of Eligibility
- 10-13 Davis Bacon Act Wage Determinations
- 10-14 Approval of Wage Rates
- 10-15 Pre-award On-site Equal Opportunity Compliance Review
- 10-16 Affirmative Action Compliance for Construction
- 10-17 Equal opportunity Pre-award Clearance of Subcontracts
- 10-18 Employment Eligibility Verification

Clause 10-1 NONDISCRIMINATION AND AFFIRMATIVE ACTION (Sep 98)(BPI 10.3.1)

(a) The Contractor shall not discriminate against its employees or applicants because of their race, color, religion, sex, national origin, age, status as Disabled or Vietnam Veterans, or physical or mental handicaps. The Contractor certifies that it does not, and will not, maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, the Contractor agrees to take affirmative action to employ, train, advance in employment and retain individuals in accordance with applicable laws and regulations including:

- (1) For nondiscrimination based on race, color, religion, sex or national origin this includes, but is not limited to, the U. S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 Fed. Reg. 12319). Contractor disputes related to compliance with its obligations shall be handled according to the rules, regulations and relevant orders of the Secretary of Labor (See 41 CFR 60).

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(2) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4012); Executive Order 11701, January 24, 1973 (38 CFR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250).

(3) For nondiscrimination based on the Handicapped this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741).

(4) For nondiscrimination based on Age this includes, but is not limited to, Executive Order 11141, February 12, 1964 (29 CFR 2477).

(b) The Contractor shall include the terms of this clause in every subcontract or purchase order as appropriate, and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

(End of clause)

Clause 10-2 EMPLOYMENT PRACTICES (Mar 10)(BPI 10.2.1)

The Contractor agrees to comply with all applicable Federal, State, local laws, and regulations concerning Equal Employment Opportunity, the payment of minimum wages (including, but not limited to, the Fair Labor Standards Act) and the use of safe practices (including, but not limited to, the Occupational Safety and Health Act).

(End of clause)

Clause 10-3 SERVICE CONTRACT ACT OF 1965 (Oct 09)(BPI 10.4.4)

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, [41 U.S.C. 351, et seq.].

"Contractor," as used in this clause or in any subcontract, shall include the subcontractor, except in the term "BPA Prime Contractor."

"Service employee," as used in this clause, 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 service employees 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 the Act 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. 356, 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.

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(2) Conforming additional classifications.

(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee not listed therein 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 which 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 (CO) no later than 30 days after the unlisted class of employee performs any contract work. The CO 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 CO 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 posted as a part of the wage determination or a written copy shall be furnished to each affected employee.

(iv) Establishing rates.

(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 upon 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 contract 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 such 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

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work by the unlisted class of employees, the Contractor shall advise the CO of the action taken, but the other procedures in paragraph (c)(2)(ii) of this section 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 Act 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 two years, 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 two years under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Health & Welfare 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 wage determination 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 the payment of a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Act 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 wage determination 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 agreements, 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 Part 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 Part 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 Part 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result

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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 similar services 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 Board of Service Contract Appeals, 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 section 2(a)(4) of the Act and of this contract.

(h) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three 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:

(A) For each employee subject to the Act --

(i) Name, address and social security number;

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

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

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

(B) 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)(iv)(B) of this clause will fulfill this requirement.

(C) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (m) 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.

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(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 CO, upon direction of the Department of Labor and notification of the Contractor, shall take action to suspend 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.

(i) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act 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 Act may not be of any duration longer than semi-monthly.

(j) Withholding of payments and termination of contract. The CO shall withhold or cause to be withheld from the BPA 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 CO 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 Act all or part of the wages or fringe benefits due under the Act, the CO 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 BPA may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) Subcontracts. The Contractor agrees to include this clause in all subcontracts subject to the Act.

(l) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the BPA 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 BPA prime contractor shall report such fact to the CO, 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, together with a copy of the collective bargaining agreement. Such report shall be made upon commencing performance on 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.

(m) Seniority Lists. Not less than ten days prior to completion of any contract being performed at a BPA 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 Part 4.173), the incumbent prime contractor shall furnish to the CO 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 CO shall provide this list to the successor contractor at the commencement of the succeeding contract.

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(n) Rulings and interpretations. Rulings and interpretations of the Act are contained in 29 CFR Part 4.

(o) Variations, tolerances and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (n) 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 section 4(b) of the Act 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 section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the DOL (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, 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.

(p) 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 recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, 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.

(q) 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 concerning labor standards requirements 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)

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Clause 10-4 LABOR STANDARDS -- PRICE ADJUSTMENT (Oct 93)(BPI 10.4.4)

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

(b) The minimum monetary wages and fringe benefits required to be paid or furnished to service employees under this contract as set forth in the wage determination, shall be subject to adjustment if (1) the period of performance of this contract exceeds two years, (2) the contract contains option provisions specifying that a differing wage determination shall apply thereto, (3) an amendment to the Fair Labor Standards Act is enacted revising the minimum wage rate, (4) a contract modification significantly changes the nature of the work, or, (5) the Department of Labor otherwise directs.

(c) The contract price or contract unit priced labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with the new rates, or the decrease is voluntarily made by the Contractor.

(d) Any such adjustment shall be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, material costs, overhead, or profit. (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour.)

(e) The Contractor shall notify the Contracting Officer (CO) of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the CO. The Contractor shall promptly notify the CO of any decrease under this clause, but nothing in the clause shall preclude the BPA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the CO may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(f) The CO or an authorized representative shall have access to and the right to examine any pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

Clause 10-5 WAGE DETERMINATION (Mar 10) (BPI 10.4.4)

The wage determination(s) referred to in the clause 10-3, Service Contract Act, are incorporated into the contract, and are identified as follows:

Decision Number: Date:
Last Modifications Number: Date:

(End of clause)

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Clause 10-6 RESERVED

Clause 10-7 DAVIS-BACON ACT (Sep 98) (BPI 10.5.5)

(a) 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, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) 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. 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, Trainees, and Helpers." 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. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) Additional wage classifications.

(1) The CO shall require that any class of laborers or mechanics, including helpers, 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 CO shall approve an additional classification, and wage rate and fringe benefits therefore, only when all the following criteria have been met:

(A) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination.

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

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(D) With respect to helpers, such 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 CO 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 CO to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator or an authorized representative will approve, modify, or disapprove every

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additional classification action within 30 days of receipt and so advise the CO or will notify the CO 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 CO do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the CO shall refer the questions, including the views of all interested parties and the recommendation of the CO, 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 CO or will notify the CO within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(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. Pending approval of the wage rate classification by the Wage and Hour Division per (b)(2) or (b)(3), the CO may unilaterally modify the contract to incorporate wage rates for interim use, as determined by the CO pursuant to (b)(1) of this clause. Whenever payment of such interim wage rate is made as prescribed by the CO pursuant to (b)(1), and the paid wage rate materially differs from the wage rate approved by the Wage and Hour Division pursuant to subparagraphs (b)(2) or (b)(3) of this clause, the CO shall make an equitable adjustment (upward or downward) in the contract price. The amount of the adjustment shall be the difference between the sum of interim wage rate paid and the wage rate approved by the Wage and Hour Division.

(c) 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.

(d) 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 Davis-Bacon Act 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.

(e) The Contractor shall comply with the requirements of the Copeland ("Anti-Kickback") Act, as amended, (18 U.S.C. 874 and 40 U.S.C. 276c) and its implementing regulations (29 CFR Part 3), which require reasonable procedures in place to prevent and detect unlawful practices to induce or intimidate employees to accept lessor compensation than they are entitled to under a contract of employment.

(f) Disputes concerning labor standards. The U.S. 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.

(End of clause)

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Clause 10-8 WITHHOLDING -- LABOR VIOLATIONS (Oct 93) (BPI 10.5.5)

The CO may withhold, or cause to be withheld, from the Contractor under this contract, or any other Federal contract with the same Prime Contractor, as much of the otherwise due payments, advances, or guarantee of funds, 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 and fringe benefits 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 CO 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)

Clause 10-9 PAYROLLS AND BASIC RECORDS (Oct 93) (BPI 10.5.5)

(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 section 1(b)(2)(B) of the Davis-Bacon Act), 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 "Davis-Bacon Act" 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 section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, 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) Submission of payroll records to the CO is not required under this contract unless specifically requested by the CO. Providing the payrolls, when requested, shall be prompt, and shall not be considered a change to the contract. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause for the periods identified by the CO. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(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

(A) 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;

(B) 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

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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

(C) 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 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 paragraph (b)(2) of this clause.

(4) The falsification of any of the above 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 CO or authorized representatives of the CO or the Department of Labor. The Contractor or subcontractor shall permit the CO or representatives of the CO 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 CO 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)

Clause 10-10 APPRENTICES, TRAINEES AND HELPERS (Jul 94)(BPI 10.5.5)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. 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. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, 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. 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. 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 DOL determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be

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permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. 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. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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 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 Employment and Training Administration 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 on the wage determination for the work actually performed. In the event the Employment and Training Administration 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) Helpers. Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedures set forth in paragraph (b) of the Davis Bacon Act clause. The allowable ratio of helpers to journeymen employed by the Contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40% of the total number of journeymen and helpers in each contractor's, or in each subcontractor's own workforce employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeymen's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

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

(End of clause)

Clause 10-11 SUBCONTRACTS (LABOR STANDARDS) (Jul 94)(BPI 10.5.5)

(a) The Contractor or subcontractor shall include in any subcontracts the clauses entitled "Davis-Bacon Act," "Apprentices, Trainees and Helpers," "Payrolls and Basic Records," "Withholding -- Labor Violations," "Subcontracts (Labor Standards)," "Certification of Eligibility," and "Davis-Bacon Act Wage Rates." The Contractor shall include a clause requiring its subcontractors to include these clauses in any lower-tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

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(b) Notification of subcontracting.

(1) Within 14 days after award of the contract, the Contractor shall deliver to the CO a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) 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 CO an updated completed SF 1413 for such additional subcontract.

(End of clause)

Clause 10-12 CERTIFICATION OF ELIGIBILITY (Oct 93) (BPI 10.5.5)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) 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 section 3(a) of the Davis-Bacon Act 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 section 3(a) of the Davis-Bacon Act 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)

Clause 10-13 DAVIS-BACON ACT WAGE RATES (Mar 10) (BPI 10.5.5)

The wage determination(s) referred to in the clause at 10-7, Davis-Bacon Act, are incorporated into the contract, and are identified as follows:

Decision Number:	Date:
Last Modifications Number:	Date:

(End of clause)

Clause 10-14 APPROVAL OF WAGE RATES (Oct 93)(BPI 10.5.5)

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 by the CO or their representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the BPA . If the BPA refuses to authorize the use of 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)

Clause 10-15 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (Sep 98)(BPI 10.6.4)

An award in the amount of \$10 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$10 million or more) are found, on the basis of a compliance review, to be able to comply with paragraph (a) (1) of clause 10-1, Nondiscrimination and Affirmative Action, of this solicitation.

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(End of clause)

Clause 10-16 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (Sep 98)(BPI 10.6.4)

(a) Definitions. "Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

- (1) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
- (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- (3) 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); and
- (4) 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).

(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 \$35,000 shall include this clause, including the goals for minority and female participation stated herein.

(c) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation _____

Goals for female participation _____

(CO insert goals)

Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs (OFCCP) area office within 10 working days following award of any construction subcontract in excess of \$35,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

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(e) The Contractor shall implement the affirmative action procedures in subparagraphs (f)(1) through (7) of this clause. The goals stated in 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.

(f) The contractor shall take 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) Immediately notify the OFCCP area office 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.

(3) 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 (f)(2) above.

(4) 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 reviews of this policy with all onsite supervisory personnel prior to initiation of 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.

(5) 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.

(6) 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.

(7) 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.

(g) 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 (f)(1) through (7). 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 useful in achieving one or more of its obligations under subparagraphs (f)(1) through (7).

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(h) 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 non-minority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(i) The contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

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

(k) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Nondiscrimination and Affirmative Action 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.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

(End of clause)

Clause 10-17 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (Sep 98) (BPI 10.6.4)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$10 million or more without obtaining in writing from the CO a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)

Clause 10-18 EMPLOYMENT ELIGIBILITY VERIFICATION (MAR 09) (BPI 10.6.2)

(a) E-Verify enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the Contractor shall:

(A) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(B) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and

(C) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).

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(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(A) *All new employees.*

(i) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or

(ii) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph(3) of this section); or

(B) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).

(3) If the Contractor is an institution of higher education; a state or local government, or the government of a federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(A) Enrollment in the E-Verify program; or

(B) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(A) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(B) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

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(b) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(c) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(d) *Subcontracts.* The contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for:

(A) Services other than commercial services that are part of the purchase of a commercial-of-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item;

(B) Construction.

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of Clause)