

Subpart 22.1 - Basic Labor Policies

Parent topic: [Part 22 - Application of Labor Laws to Government Acquisitions](#)

22.101 Labor relations.

22.101-1 General.

(a) Agencies *shall* maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that *may* adversely affect the Government *acquisition* process and (2) that the Government obtains needed *supplies* and services without delay. All matters regarding labor relations *shall* be handled in accordance with agency procedures.

(b)

(1) Agencies *shall* remain impartial concerning any dispute between labor and *contractor* management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies *should* ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see subpart [22.5](#).

(c) Agencies *should*, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies *should* take other actions concerning labor relations problems to the extent consistent with their *acquisition* responsibilities. For example, agencies *should*-

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency *acquisition* programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute's potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted *acquisition* of *supplies* and services. This *shall* only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The *head of the contracting activity* may designate programs or requirements for which it is necessary that *contractors* be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see [22.103-5\(a\)](#)).

22.101-2 Contract pricing and administration.

(a) *Contractor* labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in *pricing* fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see [31.205-6\(b\)](#).

(b) Labor disputes *may* cause work stoppages that delay the performance of Government contracts. *Contracting officers shall* impress upon *contractors* that each *contractor shall* be held accountable for reasonably avoidable delays. Standard *contract clauses* dealing with default, excusable delays, etc., do not relieve *contractors* or subcontractors from the responsibility for delays that are within the *contractors'* or their subcontractors' control. A delay caused by a strike that the *contractor* or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent *contractor* or subcontractor could have acted to end the strike by actions such as-

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;

(2) Using other available Government procedures; and

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore *may* have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in *pricing* fixed-price contracts. Certain costs *may* increase because of strikes; *e.g.*, guard services and attorney's fees. Other costs incurred during a strike *may* not fluctuate (*e.g.*, "fixed costs" such as rent and *depreciation*), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes *shall* be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of *inspection* at the plant of a Government *contractor shall* be continued without regard to the existence of a labor dispute, strike, or picket line.

22.101-3 Reporting labor disputes.

The office administering the contract *shall* report, in accordance with agency procedures, any potential or actual labor disputes that *may* interfere with performing any contracts under its cognizance. If a contract contains the clause at [52.222-1](#), Notice to the Government of Labor Disputes, the *contractor* also *must* report any actual or potential dispute that *may* delay contract performance.

22.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) Items *shall* be removed from *contractors'* facilities affected by work stoppages in accordance with agency procedures. Agency procedures *should* allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the *contractor* and the union representative involved their approval of the *shipment* of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or *may* become involved in the removal of items, the *contract administration office shall* ensure that the necessary coordination is accomplished.

22.102 Federal and State labor requirements.

22.102-1 Policy.

Agencies *shall* cooperate, and encourage *contractors* to cooperate with Federal and State agencies responsible for enforcing labor requirements such as-

(a) Safety;

(b) Health and sanitation;

(c) Maximum hours and minimum wages;

(d) Equal employment opportunity;

(e) Child and convict labor;

(f) Age discrimination;

(g) Disabled and Vietnam veteran employment;

(h) Employment of workers with disabilities; and

(i) Eligibility for employment under *United States* immigration laws.

22.102-2 Administration.

(a) Agencies *shall* cooperate with, and encourage *contractors* to use to the fullest extent practicable, the DOL Employment and Training Administration (DOLETA) at <http://www.doleta.gov>, and its affiliated local offices in meeting *contractors'* labor requirements. These requirements *may* be to

staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the *United States*, Puerto Rico, Guam, and the U.S. Virgin Islands. In addition to providing recruitment assistance to *contractors*, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c)

(1) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's *Wage and Hour Division* is responsible for administration and enforcement of numerous wage and hour statutes including-

(i) 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (*Construction*);

(ii) 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards;

(iii) The Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145);

(iv) 41 U.S.C. chapter 65, Contracts for Materials, *Supplies*, Articles, and Equipment Exceeding \$10,000;

(v) 41 U.S.C. chapter 67, *Service Contract* Labor Standards.

(2) *Contracting officers* should contact the *Wage and Hour Division's* regional offices when required by the subparts relating to these statutes unless otherwise specified. Addresses for these offices *may* be found at 29 CFR 1, Appendix B.

22.103 Overtime.

22.103-1 Definition.

Normal workweek, as used in this subpart, means, generally, a workweek of 40 hours. Outside the *United States* and its *outlying areas*, a workweek longer than 40 hours is considered normal if-

(1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

(2) The hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

22.103-2 Policy.

Contractors shall perform all contracts, so far as practicable, without using *overtime*, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved *overtime*, extra-pay shifts, and

multishifts *should* be scheduled to achieve these objectives.

22.103-3 Procedures.

(a) *Solicitations* normally *shall* not specify delivery or performance schedules that *may* require *overtime* at Government expense.

(b) In negotiating contracts, *contracting officers should*, consistent with the Government's needs, attempt to-

(1) Ascertain the extent that *offers* are based on the payment of *overtime* and shift premiums; and

(2) Negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see [22.103-5\(b\)](#)) that *overtime* will be required in contract performance, the *contracting officer shall* secure from the *contractor* a request for all *overtime* to be used during the life of the contract, to the extent that the *overtime* can be estimated with reasonable certainty. The *contractor's* request *shall* contain the information required by paragraph (b) of the clause at [52.222-2](#), Payment for *Overtime* Premiums.

22.103-4 Approvals.

(a) The *contracting officer shall* review the *contractor's* request for *overtime*. Approval of the use of *overtime* *may* be granted by an agency approving official after determining *in writing* that *overtime* is necessary to-

(1) Meet essential delivery or performance schedules;

(2) Make up for delays beyond the control and without the fault or negligence of the *contractor*; or

(3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of *overtime* is required before inclusion of an amount in paragraph (a) of the clause at [52.222-2](#), Payment for *Overtime* Premiums.

(c) *Contracting officer* approval of payment of *overtime* premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(8) of the clause at [52.232-7](#), Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying *overtime* premiums under other types of contracts.

(e) Approvals by the agency approving official (see [22.103-4\(a\)](#)) *may* be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, *contractor* requests for *overtime* exceeding the amount authorized by paragraph (a) of the clause at [52.222-2](#), Payment for *Overtime* Premiums, *shall* be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review the request and if it approves, send the request to the *contracting officer*. If the *contracting officer*

determines that the requested *overtime should* be approved in whole or in part, the *contracting officer shall* request the approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) *Overtime* premiums at Government expense *should* not be approved when the *contractor* is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of *overtime* is authorized under a contract, the office administering the contract and the auditor *should* periodically review the use of *overtime* to ensure that it is allowable in accordance with the criteria in part 31. Only *overtime* premiums for work in those departments, sections, etc., of the *contractor's* plant that have been individually evaluated and the necessity for *overtime* confirmed *shall* be considered for approval.

(i) Approvals for using *overtime shall* ordinarily be prospective, but, if justified by *emergency* circumstances, approvals *may* be retroactive.

22.103-5 Contract clauses.

(a) The *contracting officer shall* insert the clause at 52.222-1, Notice to the Government of Labor Disputes, in *solicitations* and contracts that involve programs or requirements that have been designated under 22.101-1(e).

(b) The *contracting officer shall* include the clause at 52.222-2, Payment for *Overtime* Premiums, in *solicitations* and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*; unless-

(1) A cost-reimbursement contract for operation of vessels is contemplated; or

(2) A cost-plus- incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a *contractor's* share of at least 10 percent is contemplated.