

## 22.406-9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* If the *contracting officer* believes a violation exists (see [22.406-8](#)), or upon request of the Department of Labor, the *contracting officer must* withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the *United States* under the Contract Work Hours and Safety Standards statute. (See [22.302](#).)

(1) If the *contracting officer* believes a violation exists or upon request of the Department of Labor, the *contracting officer must* withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either *Construction Wage Rate Requirements* statute or *Contract Work Hours and Safety Standards* statute requirements.

(2) If a subsequent investigation confirms violations, the *contracting officer must* adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the *contracting officer must* not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the *Construction Wage Rate Requirements* statute and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, *must* suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back *wages*, and to cover any liquidated damages due.

(c) Disposition of contract payments withheld or suspended-

(1) Forwarding wage underpayments to the Secretary of Labor. Upon final administrative determination, if the contractor or subcontractor has not made restitution, the *contracting officer must* follow the Department of Labor guidance published in Wage and Hour Division, All Agency Memorandum (AAM) No. 215, Streamlining *Claims* for Federal Contractor Employees Act. The AAM No. 215 can be obtained at <http://www.dol.gov/whd/govcontracts/dbra.htm>; under Guidance there is a link for All Agencies Memoranda (AAMs).

(2) *Returning of withheld funds to contractor.* When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) Limitation on returning funds. If the Department of Labor requested the withholding or if the findings are disputed (see [22.406-10\(e\)](#)), the *contracting officer must* not return the funds to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, the *contracting officer must* dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

**Parent topic:** [22.406 Administration and enforcement.](#)