



United States  
Department of  
Agriculture

Office of the  
Assistant Secretary  
for Administration

Office of  
Procurement and  
Property  
Management

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Washington, DC  
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TO: W.R. Ashworth  
Senior Procurement Executive

FROM: Todd Repass   
Acting Chief  
Procurement Policy Division

OCT 20 2005

SUBJECT: Request for Class Deviation from Federal Acquisition Regulation  
(FAR) Subpart 22.4

In accordance with FAR 1.404 and Agriculture Acquisition Regulation (AGAR) 401.404, your approval is requested to deviate from FAR subpart 22.4 and FAR provisions and clauses prescribed by FAR subpart 22.4.

FAR subpart 22.4 implements statutes that prescribe labor standards for contracts in excess of \$2,000 for construction, alteration and repair of public buildings and public works. Among these statutes is the Davis Bacon Act. By Proclamation 7924 of September 8, 2005, the President suspended the applicability of the Davis Bacon Act to contracts in counties devastated by Hurricane Katrina. A list of the affected counties is attached.

The Department of Agriculture (USDA) has numerous offices in affected counties, including the National Finance Center and various agency area, regional, state, and county offices. USDA controls other real property in affected counties that may have been damaged by Hurricane Katrina. USDA anticipates that it will require construction services to repair damage from Hurricane Katrina and to restore USDA offices in order to provide assistance to citizens in areas served by these offices.

A class deviation from FAR subpart 22.4, and from clauses prescribed by subpart 22.4, is needed to implement the suspension of the Davis Bacon Act in USDA contracts for construction in affected counties. Accordingly, FAR 22.403 through 22.406 do not apply to new contracts (or orders) for construction in affected counties with the following exceptions:

FAR section	Applicability (over \$2,000)
22.403-2 Copeland Act	Anti-Kickback provisions of Copeland Anti-Kickback Act (18 U.S.C. 874) applies to all construction. Weekly statement of wage compliance and clause requirement do not apply (40 U.S.C. 3145 (recodified from 40 U.S.C. 276c)).
22.403-3 Contract Work Hours and Safety Standards Act (CWHSSA)	Still applies to construction over the \$250,000 simplified acquisition threshold in affected counties.
22.403-4 Department of Labor regulations	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874); rules of practice applicable; Administrator, Wage and Hour Division still contact point for interpretation of Department of Labor regulations
22.405 Labor standards for construction work performed under facilities contracts	Applicable to facilities contracts in affected counties, as modified (see attached clause)
22.406-1 Administration and enforcement; Policy	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874)
22.406-7 Compliance checking, par. (a)	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874)
22.406-8 Investigations	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874)
22.406-9 Withholding from or suspension of contract payments	Applicable to enforcement of CWHSSA
22.406-10 Disposition of disputes concerning construction contract labor standards enforcement, through 22.406-13 Semiannual enforcement reports	Applicable to construction generally

A class deviation from clause prescriptions in FAR Subpart 22.4, and specifically from the prescriptions in FAR 22.407, Contract Clauses, is needed as follows:

A. Solicitations and contracts for single projects to be performed in a single phase:

The following clauses still shall be inserted in solicitations and contracts for construction in affected counties:

52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation  
52.222-8 Payrolls and Basic Records  
52.222-9 Apprentices and Trainees  
52.222-10 Compliance with Copeland Act Requirements  
52.222-12 Contract Termination –Debarment (DEVIATION)  
52.222-14 Disputes Concerning Labor Standards  
52.222-15 Certification of Eligibility  
52.222-17 Labor Standards for Construction Work – Facilities Contracts  
(DEVIATION)

52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988)  
(DEVIATION)

A breach of the contract clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK—  
FACILITIES CONTRACTS (FEB 1988) (DEVIATION)

- (a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:
- (1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.
  - (2) Payrolls and Basic Records at 52.222-8.
  - (3) Apprentices and Trainees at 52.222-9.
  - (4) Compliance with Copeland Act Requirements at 52.222-10.
  - (5) Contract Termination—Debarment at 52.222-12 (Deviation).
  - (6) Disputes Concerning Labor Standards at 52.222-14.
  - (7) Certification of Eligibility at 52.222-15.

(Strike out references to CWHSSA in contracts under the simplified acquisition threshold)

B. Multiphase construction contracts, construction contracts with options, Requirements or IDIQ contracts for construction

For construction contracts that include tasks or severable performance that may occur after the suspension of the Davis Bacon Act is lifted, include all applicable Davis Bacon clauses without regard to the suspension. Include clause 452.222-70, Suspension of Davis Bacon Act (OCT 2005) (below), in accordance with the following AGAR prescription:

**422.470 Suspension of Davis Bacon Act.** The contracting officer shall insert the following clause in solicitations and contracts for construction, alteration, or repair of public buildings or works located in counties identified in Proclamation 7924 of September 8, 2005 if the estimated value of the contract exceeds \$15,000, or the micro-purchase threshold, whichever is less. The clause shall be included in section I of the solicitation and contract, and may also be inserted behind SF 1442, AD 838, or OF 347 in the contract package.

**452.222-70 Suspension of Davis Bacon Act (OCT 2005)** Pursuant to Proclamation 7924 of September 8, 2005, the President has suspended the Davis-Bacon Act in counties devastated by Hurricane Katrina. Accordingly, until written notice is provided to the contractor, the provisions of FAR subpart 22.4 related to the Davis-Bacon Act that are dependent on wage determinations made by the Secretary of Labor shall not apply to work performed in the following jurisdictions:

Alabama:

The counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington

Florida:

The counties of Broward, Miami-Dade, and Monroe

Louisiana:

The parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn

Mississippi:

The counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah,

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Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo.

Upon receipt of notice of termination of the suspension, the contractor may request an equitable price adjustment to compensate for any increase in wage rates directly related to reinstatement of the provisions of the Davis Bacon Act.

(End of Clause)

In accordance with FAR 1.404, USDA has received notice from the chairperson of the Civilian Agency Acquisition Council (CAAC) that consultation has occurred. A copy of CAAC Letter 2005-05 is attached to this deviation request as evidence of consultation.

APPROVAL:

In accordance with FAR 1.404 and AGAR 401.404, I authorize this deviation from FAR subpart 22.4.

  
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W.R. Ashworth, Senior Procurement Executive

10-21-05  
\_\_\_\_\_  
Date

Attachment