

Labor Standards for Construction



Guiding Principles

- The complexity of the Department's construction program requires a high degree of coordination among contractors, such as when two or more are performing at the same DOE site.
- Both contracting and program personnel need to be aware of the dynamics involved in these situations.

Reference: FAR 22.3 and 22.4

Overview

This section discusses the application of labor standards for contracts involving construction. While the FAR provides detailed guidance for the application of these labor statutes, this chapter provides DOE's acquisition community examples of when the statutes may apply to specific situations. This guidance, along with the FAR requirements, gives DOE personnel the kind of information needed to make decisions regarding application of relevant labor laws to Government contracts.

Background

The Federal Acquisition Regulation, at sections 22.3 and 22.4, provides guidance to Contracting Officers for applying statutory labor requirements to contracts that involve construction. The statutes addressed in FAR are:

The Davis-Bacon Act

The Copeland (Anti-Kickback) Act

The Contract Work Hours and Safety Standards Act

Illustrations

The following examples identify some of the contractual situations where the above statutes may or may not apply.

Land-based prototypes

The construction of a full-scale operating prototype of a reactor and all necessary nuclear power components, systems, and propulsion equipment for a submarine is subject to the statutes.

In fabricating ship prototypes, the assembling and fitting of components of nuclear steam propulsion units into the hull sections, including installation of the pressure vessels, turbo-generator sets, heat exchangers, control wiring, etc., are subject to Davis-Bacon.

Paving

The construction of roads is subject to the statutes. This includes grading and repair of roads when the repair includes work in roadbeds before resurfacing, the building-up of shoulders, forming ditches, culverts and bridges, and the resurfacing of roads.

Recurring-type maintenance work, such as patching surfaces, filling chuck holes, patching shoulders, and resurfacing railroad crossings is not subject to the statutes.

Similarly, patch and maintenance work on a parking lot, the replacement of bumper stops, and the repainting of parking dividers is not subject to the statutes.

Stationary boilers

The construction, alteration and/or repair, including installation and rebuilding, of stationary boilers costing more than \$2,000 for labor and materials are subject to the statutes. Minor maintenance that is necessary to keep the boiler in safe operating condition is not.

Start-up of operating activity after fire or other catastrophe

Rebuilding of a plant following a catastrophe, such as replacement of structural members, roof trusses, walls, roof, utility services, and process piping is subject to the labor statutes.

However, where process equipment can be restarted and/or operational activities resumed prior to such rebuilding, the actual work of start-up, including preliminary activity, e.g., cleaning, drying, checking, adjustment, temporary services, and temporary weather protection of equipment, essential to such resumption of operational activity, is not subject to the statutes.

Rehabilitation of facilities

By contrast, with emergency services needed to restore or maintain functional usefulness, rehabilitation of a facility is subject to the labor statutes. This may include painting, change-out, rearrangement and installation of equipment, and the replacement or repair of damaged parts of a structure or of building services or equipment.

In this kind of rehabilitation, the start-up of equipment by operating employees is not subject to the laws.

Painting

Although painting and decorating are specifically identified in the Davis-Bacon Act, painting which is closely integrated within operation and maintenance activities and such repainting as color coding of process lines and service piping, including valves and directional arrows, is work that is not subject to the labor laws.

The application of various materials for localizing contamination, painting of machine tools to identify degree of contamination, and preventive maintenance such as repainting of machine tools, equipment and plant structures are not subject to the statutes when performed with a stable work force employed by the operating contractor.

Installation, rearrangement and adjustment of equipment

During construction. In the construction of a new facility, whether a production plant, a laboratory, or supporting facilities, such as shops and warehouses, an integral part of the construction project is the installation of equipment. This includes mechanical equipment, building services, and instruments that permit the facility to be utilized for the intended purpose.

The initial installation, arrangement, adjustment, balancing, calibration, and checking of the equipment is a logical part of the construction contract and is subject to the statutes.

Plant start-up. If, at the time of the turnover of a DOE facility from construction to operating activities, the facility is turned over a section at a time, some issues of statutory coverage may arise.

When final test and acceptance of a plant is performed by personnel of the operating organization, the effort is not subject to the statutes.

Equipment and equipment assemblies. The Department of Labor has ruled that while contracts in excess of \$10,000 for equipment, including erection or installation, are subject to the Walsh-Healey Act, they may also be covered under the Davis-Bacon Act where more than an incidental amount of work is involved. Examples include furnishing and installing mechanical equipment such as elevators or generators requiring prepared foundations or housing.

A contract for furnishing the initial installation of piping, wiring, gas exhaust fans, plumbing, sheet metal work, and related activities to install kitchen baking equipment is comparable to the basic plumbing, wiring, and heating contracts and is subject to statutory requirements.

Alteration or rearrangement of existing facilities involving similar work to accommodate new or different equipment is also covered.

When the installation, rearrangement or adjustment of equipment is not a legitimate part of any current related construction project, it is not subject to the statutes unless the work creates a construction related situation.

Telephone and utility systems. Contracts involving the installation of telephone systems or utilities are not subject to the labor statutes when the work is performed by employees of the telephone or utility company supplying the services, and the material and equipment installed are owned by the telephone or utility company. Such installation is considered to be an extension of the utility's services.

However, a contract for a central telephone system to be installed by the manufacturer and owned by the United States is subject to the statutes. Additionally, relocation of utility lines to accommodate construction of a public work is subject to the statutes.

Maintenance contracts

Contracts for servicing or maintenance work are not ordinarily subject to the labor standards requirements of FAR 22.4. Maintenance includes the routine, recurring kind of work that is necessary to keep a facility in an efficient operating condition.

However, if a maintenance or service contract calls for substantial and separable tasks for construction, alteration or repair, the labor standards apply to that portion of the contractual effort.

DOE's Role in Construction Labor Relations

The following goals summarize key issues that DOE personnel attain when dealing with construction labor issues:

Effective coordination is established among project contractor management.

Labor relations practices conform to local customary practices.

Factors unique to a particular project (such as duration of the project, tenure of employment, housing and travel accommodations, length of regular workweek, uniformity of shift, special subsidies, etc.) are considered and addressed in project labor agreements.

Uniform policies are established for employees in similar classifications for all construction employers at the same site.

Effective working relationships are encouraged between DOE contractors and local employee unions.

Executive Orders 13202 and 13208 generally require that agencies and their construction managers remain neutral towards project labor agreements. Some DOE sites have project labor agreements predating the Executive Orders, some instigated by DOE and some instigated by the

site management contractor. Contracting officers should look to Acquisition Letter 2002-08 for guidance in these matters including model clauses for use in the contracts.

Headquarters Point of Contact

Any questions addressing Labor Standards and the requirements of FAR 22.4 should be directed to the Headquarters Office of Legacy Management (LM-20) at (202) 586-0452.