BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 10-A

LABOR LAWS AND PROCEDURES

Table of Contents

SECTION 1 INTRODUCTION. 2
SECTION 2 SERVICE CONTRACT ACT PROCEDURES. 2
2.1 Some Examples of Contracts Covered....2
2.2 Exemptions created by the Secretary of Labor. 3
2.3 Wage Determinations Based on Prevailing Rates....4
2.4 Wage Determinations Based on Collective Bargaining Agreements. 4
2.5 Requesting Wage Rate Determinations. 5
2.6 Awarding a contract without a Wage Determination....7
2.7 Review of Wage Determination. 7
2.8 Delay of Acquisition Dates Over 60 Days....7
2.9 Errors Discovered by the Department of Labor. 7
2.10 Post Award Discussions. 7
2.11 Additional Classes of Service Employees. 8
2.12 Seniority Lists. 8
SECTION 3 CONSTRUCTION CONTRACT PROCEDURES....9
3.1 Information. 9
3.2 General Requirements....9
3.3 Davis-Bacon Act Wage Determinations....10
3.4 Award of Contract without Required Wage Determination. 10
3.5 Posting Wage Determinations and Notice. 10
3.6 Wage Determination Appeals. 10
3.7 Additional Classifications. 10
3.8 Apprentices and Trainees....11
3.9 Subcontracts. 11
3.10 Payrolls and Statements....11
3.11 Site Compliance Checking. 12
3.12 Investigations....12
3.13 Withholding From or Suspension of Contract Payments. 13
3.14 Disposition of Disputes Concerning Contract Labor Standards Enforcement. 14
3.15 Contract Terminations. 15

SECTION 1 INTRODUCTION.

This Appendix sets forth procedural matters relating to BPA's implementation of the Service Contract Act and the Davis Bacon Act. For policy and related guidance, Part 10 of the BPI should be utilized. The Contracting Officer is not discouraged from contacting the Department of Labor directly through their websites at: http://www.wdol.gov/aam.aspx or http://www.dol.gov/esa/whd/programs/dbra/faqs.htm for any questions or concerns regarding the implementation of the Service Contract Act or Davis Bacon Act requirements.

SECTION 2 SERVICE CONTRACT ACT PROCEDURES.

2.1 Some Examples of Contracts Covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, housekeeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment.

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

2.2 Exemptions created by the Secretary of Labor.

(a) In addition to the statutory exemptions cited in BPI Subpart 10.4.2, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly-scheduled runs of the trains, airplanes, buses, and vessels over regularly-established routes and accounts for an insubstantial portion of the carrier's revenues.

(2) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(3 Contracts principally for the maintenance, calibration, or repair of the following types of equipment, subject to the restrictions in paragraphs (b) and (c) below:

(A) Automated data processing equipment and office information/word processing systems.

(B) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment;" Class 6525, "X-ray Equipment;" FSC Group 66, Class 6630, "Chemical Analysis Instruments;" and Class 6665, "Geographical and Astronomical Instruments," are largely composed of the types of components hereunder).

(C) Office/business machines not otherwise exempt pursuant to paragraph (a)(3)(A) above, if such services are performed by the manufacturer or supplier of the equipment.

(b) The exemption set forth in subparagraph (a) above shall apply only under the following circumstances:

(1) If the items of equipment are items which are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(2) If the contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such commercial items.

(3) If the contractor utilizes the same compensation (wage and health and welfare benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment for commercial customers.

(c) Determinations of the applicability of the Secretarial exemption shall be made by the CO before contract award. In determining that the exemption applies, the CO shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(d) If the Department of Labor determines after contract award that any of the requirements for exemption have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

2.3 Wage Determinations Based on Prevailing Rates.

Contractors performing on service contracts in excess of $2,500 to which no predecessor contractor's collective bargaining agreement applies shall pay their employees at least the wages and health and welfare benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in Section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206).

2.4 Wage Determinations Based on Collective Bargaining Agreements.

(a) Successor contractors performing on contracts in excess of $2,500 for substantially the same services performed in the same locality must pay wages and health and welfare benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement will not apply if the Department of Labor determines as a result of a hearing that the wages and health and welfare benefits are substantially at variance with those which prevail for services of a similar character in the locality, or that they have not been reached as a result of arm's length negotiations.

(b) Subparts in this Section 2 which deal with this statutory requirement and the Department of Labor's implementing regulations are at 2.8(b), concerning applicability of this requirement and the forwarding of a collective bargaining agreement with a Notice (SF 98, 98a); 2.8(c), concerning notification of purchase dates to contractors and bargaining representatives; 2.11(b), explaining when a collective bargaining agreement will not apply due to late receipt by the CO; and 2.14, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

(c) BPA or other interested parties may request a hearing on an issue involving the review of a wage determination based upon a collective bargaining agreement. To obtain a hearing for BPA, the CO shall submit a request through the HCA to the DOL, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, with sufficient data to support a prima facie showing that the rates at issue vary substantially from those prevailing for similar services in the same locality. The request shall also include (1) the number of the wage determinations at issue, (2) name of contracting agency, (3) status of the

acquisition and any estimated acquisition dates (e.g., proposal receipt, award, and commencement of performance), and (4) names and addressees, if known, of interested parties.

(d) Unless the DOL determines that extraordinary circumstances exist, they will not consider requests for a hearing unless received before the commencement date of the contract or the follow-up option period, as the case may be.

2.5 Requesting Wage Rate Determinations.

(a) The CO shall obtain the appropriate wage determinations either by going to the Department of Labor website at http://www.wdol.gov/aam.aspx or electing to submit Standard Form 98 and 98a in accordance with instructions found at the website for the following service contracts.

(1) Each new solicitation and contract in excess of $2,500.

(2) Each contract modification which brings the contract value above $2,500, which--

(A) Extends the existing contract pursuant to an option clause or otherwise; or

(B) Changes the scope of the contract whereby labor requirements are affected significantly.

(3) Each multiple-year contract in excess of $2,500,.

(b) Successor ship with Incumbent Contractor Collective Bargaining Agreement.

(1) Early in the acquisition cycle, the CO shall determine whether section 4(c) of the Act involving successor ship affects the new acquisition. The CO shall determine whether there is a predecessor contract and, if so, whether the incumbent prime contractor or its subcontractors, and any of their employees, have a collective bargaining agreement.

(2) Section 4(c) of the Act provides that a successor contractor must pay wages and health and welfare benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(A) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(B) The services will be performed in the same locality.

(C) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and health and welfare benefits are the subject of one or more collective bargaining agreements.

(3) The application of section 4(c) of the Act is subject to the following limitations:

(A) Section 4(c) of the Act will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(B) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the

terms of the new or revised agreement shall not be effective for the purposes of section 4(c) of the Act under the following conditions:

(i) BPA receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award; and

(ii) The CO has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates.

(4) If section 4(c) of the Act applies, the CO shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent's contractor's collective bargaining agreement may involve coordination with the CO responsible for administering the predecessor contract. (Clause 10-3, Service Contract Act of 1965, requires the incumbent prime contractor to furnish the CO a copy of each collective bargaining agreement.) The CO shall submit a copy of each collective bargaining agreement together with any related documents specifying the wage rates and health and welfare benefits currently or prospectively payable under each agreement with the Notice.

(5) Section 4(c) of the Act will not apply if the Secretary of Labor determines after a hearing that the wages and health and welfare benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the same locality, or that they are not the result of arm's length bargaining.

(6) If the services are being furnished at more than one location and the collectively bargained wage rates and health and welfare benefits are different at different locations or do not apply to one or more locations, the CO shall identify the locations to which the agreements apply.

(7) If the collective bargaining agreement does not apply to all service employees under the contract, the CO shall separate the service employee classifications (1) subject to the collective bargaining agreement and (2) not subject to any collective bargaining agreement and ensure that those in category (2) are covered by an appropriate wage determination as part of the contract.

(c) Notification to Interested Parties Under Collective Bargaining Agreements.

(1) The CO should determine whether the incumbent prime contractor's, or its subcontractors', service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the CO shall give both the incumbent contractor and its employees' collective bargaining agent written notification of:

(A) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of offers, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(B) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(C) The forthcoming multiple-year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(2) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable option exercise date in order for the time-of-receipt limitations to apply. The CO shall retain a copy of the notification in the contract file.

2.6 Awarding a contract without a Wage Determination.

If the CO awards a contract without an applicable wage determination, they shall make an equitable adjustment immediately following incorporation of the wage determination or revision, unless the incorporated wage determination or revision is based on the economic terms of the collective bargaining agreement previously submitted to the Department of Labor.

2.7 Review of Wage Determination.

(a) Based on incumbent collective bargaining agreement.

(1) If wages, health and welfare benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the CO shall consider instituting the procedures in 2.5(c).

(2) If the CO believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the CO shall contact the HCA to determine appropriate action.

(b) Based on other than incumbent collective bargaining agreement. Upon receiving a wage determination not predicated upon a collective bargaining agreement, the CO shall ascertain:

(1) Whether the wage determination does not conform with wages and health and welfare benefits prevailing for similar services in the locality; or

(2) Whether the wage determination contains significant errors or omissions.

(c) If either subparagraph (b) (1) or (b) (2) of this section is evident, the CO shall contact the Department of Labor to determine appropriate action.

2.8 Delay of Acquisition Dates Over 60 Days.

If any award was delayed, for whatever reason, more than 60 days beyond the anticipated award date, the CO shall obtain a revised wage determination from the DOL website and allow the contractor adequate time to revise their rates and contract price if appropriate.

2.9 Errors Discovered by the Department of Labor.

If the Department of Labor determines, either before or after a contract award, that a CO made an erroneous determination that the Service Contract Act did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the CO, within 30 days of notification by the Department of Labor, shall include in the contract the clause at 10-3, Service Contract Act of 1965, and any applicable wage determination issued by the DOL. If the contract is subject to section 10 of the Act (41 U.S.C. 358), the DOL may require retroactive application of that wage determination. The CO shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

2.10 Post Award Discussions.

The CO shall take steps to:

(a) ensure that service contractors notify their employees of minimum wages and health and welfare benefits.

(b) At the time of award, direct the contractor to the Department of Labor website at http://www.dol.gov/esa/whd/ to download posters entitled, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and health and welfare benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (g) of the clause at 10-3, Service Contract Act of 1965, As Amended.

(c) During the award process, inform the contractor of the labor standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

2.11 Additional Classes of Service Employees.

(a) If the CO is aware that contract performance involves classes of service employees not included in the wage determination, the CO shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 10-3, Service Contract Act of 1965, As Amended). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work, following CO and DOL instructions.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Sub-minimum rates for apprentices, student learners, and handicapped workers are permissible in accordance with paragraph (q) of the clause at 10-3, Service Contract Act of 1965, As Amended.

2.12 Seniority Lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish to the CO, no later than 10 days before contract completion, a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment. (See paragraph (n) of the clause at 10-3, Service Contract Act of 1965, as Amended.) At the commencement of the succeeding contract, the CO shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other health and welfare benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

SECTION 3 CONSTRUCTION CONTRACT PROCEDURES.

3.1 Information.

The Davis-Bacon Act requires contractors and subcontractors to comply with wage determinations issued by the Department of Labor on all contracts in excess of $2,000 for construction, alteration or repair of public works or public buildings. As interpreted, this law also applies to contracts for construction activities funded by federal monies whether the property is public or privately owned. Providing funds to tribal governments or other entities, for construction-related activities on privately owned property is covered by this Act. Construction, alteration and repair are broad and inclusive terms. Painting and decorating are included in this definition. Other activities, such as fence building and environmental alterations, are covered by this Act.

3.2 General Requirements.

(a) The published wage determinations shall either be incorporated into applicable solicitations with their most current modification or included by reference. (Decision number, date, modification number and date must be included when incorporating by reference.)

(b) The CO shall ensure that only the appropriate wage determinations are incorporated in solicitations and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO shall indicate the work to which each wage determination or part thereof applies.

(c) If the wage determination contains more than one rate schedule, the CO shall either include only the rate schedules that apply to the specific types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule shall be applied.

(d) The following general guidelines for use in selecting the proper schedule(s) of wage rates shall be used:

(1) Building construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary. It includes BPA's maintenance complexes, headquarters buildings and fish hatcheries.

(2) Residential construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(3) Highway construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.

(4) Heavy construction includes those projects that are not otherwise classified as either "building," "residential," or "highway," and is of a catch-all nature, such as, construction of BPA substations, transmission lines and access roads. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., "dredging," "water and sewer line," "dams," flood control," etc.

(5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally-established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, guidance shall be sought before incorporation. (Further guidance can be found at the DOL websites: http://www.dol.gov/esa/whd/ and http://www.wdol.gov/aam.aspx .

3.3 Davis-Bacon Act Wage Determinations.

The DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wages, including health and welfare benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination. The CO obtains the appropriate and applicable wage determination by following the guidance on the Department of Labor website at http://www.wdol.gov/aam.aspx and the DOL Employment Standards website at http://www.dol.gov/esa/whd .

3.4 Award of Contract without Required Wage Determination.

If it is discovered after award that the wrong wage determination or rate schedules were specified, the CO shall modify the contract to incorporate the corrected wage determination, retroactive to the date of award, and if appropriate, equitably adjust the contract price.

3.5 Posting Wage Determinations and Notice.

The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place where it can be easily seen by the workers. The CO shall furnish the contractor with Department of Labor, Notice to Employees Working on Federal and Federally Financed Construction Projects, to be posted with the wage rates. The contractor shall ensure that the posting includes the name, address, and telephone number of the BPA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

3.6 Wage Determination Appeals.

The Secretary of labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. BPA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by the DOL has been sought pursuant to 29 CFR 1.8 and denied.

3.7 Additional Classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the CO, pursuant to the clause at 10-7, Davis-Bacon Act, shall require that the contractor submit, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any health and welfare benefits payments.

(b) Upon receipt of the SF 1444, the CO shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

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

(3) The proposed wage rate, including any health and welfare benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c) If the criteria in paragraph (b) of this section are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the CO approves, the CO shall submit a report (including a copy of SF 1444) of that action to the DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for health and welfare benefits); or

(d) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CO do not agree on the proposed additional classification, or if the criteria are not met, the CO shall submit a report (including a copy of SF 1444) giving the views of all interested parties and the CO's recommendation to the DOL, Wage and Hour Division, for determination of appropriate classification and wage rate.

(e) Within 30 days of receipt of the report, the DOL, Wage and Hour Division, will complete action and so advise the CO, or will notify the CO that additional time is necessary.

(f) Upon receipt of the Department of Labor's action, the CO shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 10-7, Davis Bacon Act, and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

3.8 Apprentices and Trainees.

(a) The CO or COR may review the contractor's employment and payment records for apprentices and trainees to ensure that the contractor has complied with the clause Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause 10-10, Apprentices, Trainees and Helpers, the CO shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

3.9 Subcontracts.

(a) In accordance with the requirements of the clause at 10-11, Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

(b) In order to ensure that the requirements of the clause at 10-11, Subcontracts (Labor Standards), are understood, the CO will send a copy form SF 1413 to the prime contractor upon award of each contract.

3.10 Payrolls and Statements.

(a) Contractor and subcontractors are required to submit payrolls only if required by Contracting Officer, typically when compliance is challenged or the contractor has a record of labor violations. When the Contracting Officer requires submission of a payroll, the contractor must submit or cause to be submitted payrolls and basic records described in clause at 10-9, Payrolls and Basic Records.

(b) The CO, or his or her representative, shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to --

(1) The correctness of classifications and rates;

(2) Health and welfare benefits payments;

(3) Hours worked;

(4) Deductions; and

(5) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

(c) Health and welfare benefits payments, contributions made or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved.

(d) Disclosure of payroll records: Contractor payroll records in BPA's possession must be carefully protected from any public disclosure which is not required by law since payroll records may contain information in which the contractor's employees have a privacy interest as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

3.11 Site Compliance Checking.

(a) The CO or his or her representative may do research as necessary to ensure compliance with the labor standards requirements of the contract. As stated, submission of weekly payrolls is not required unless specified by the CO.

(b) When submitted, compliance checks should be performed and should include the following activities:

(1) Employee interviews to determine correctness of classifications and rates of pay, health and welfare benefits payments, and hours worked.

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls they submitted are on time and complete, as well as in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

3.12 Investigations.

(a) 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.

(b) The DOL may conduct labor standards investigations or request BPA to do so.

(c) The BPA CO shall inform the HCA and then contact the Department of Labor for instruction if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. Investigations normally include all aspects of the contractor's compliance with contract labor standards requirements, not to be limited to specific areas raised in a complaint or uncovered during compliance checks. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, shall not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, the DOL, Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to the DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of the DOL.

(d) The DOL will make preliminary findings regarding the contractor. Adverse findings normally require more corroborating evidence than employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(e) The CO shall work cooperatively with DOL and follow their guidance for investigating, withholding funds, and reporting on the results of the review. These activities could result in the following actions:

(1) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(2) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. The identity of any employee who filed a complaint or who was interviewed shall not be disclosed without the prior consent of that employee.

(3) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings shall be considered final.

(4) The contractor may be requested to make restitution for underpaid wages and liquidated damages determined by the investigation, whether or not the violation is considered willful. If the request includes liquidated damages, it shall also contain a written statement that the contractor may request relief from such assessment, within 60 days.

(f) Ultimately a final report, including findings and supporting evidence shall be written and distributed to all involved parties.

3.13 Withholding From or Suspension of Contract Payments.

(a) Suspension of contract payments. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, BPA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from the DOL, the violations are discontinued or until

sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(b) Returning of withheld funds to contractor. When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds shall be paid the contractor in an expeditious manner.

(c) Limitation on forwarding or returning funds. If the withholding was requested by DOL or if the findings are disputed, the CO shall not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

3.14 Disposition of Disputes Concerning Contract Labor Standards Enforcement.

(a) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include

(1) Misclassification of workers;

(2) Hours of work;

(3) Wage rates and payment;

(4) Payment of overtime;

(5) Withholding practices; and

(6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from DOL.

(c) When requesting the contractor to take corrective action in labor violation cases, the CO shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are to be resolved by the DOL, not by the Disputes clause of the contract.

(2) The contractor may appeal the CO’s findings or part thereof by furnishing the CO a complete statement of the reasons for the disagreement with the findings.

(d) The CO shall promptly transmit the CO’s findings and the contractor's statement to the DOL, Wage and Hour Division.

(e) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to BPA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the DOL Wage Appeals Board are conducted in accordance with 29 CFR Part 7.

(f) The DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon

Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

3.15 Contract Terminations.

In an instance where a contract may be terminated for violations of the labor standards clauses, a report to the DOL, Wage and Hour Division, Department of Labor, shall be prepared. The report shall include --

(a) The number of the terminated contract;

(b) The name and address of the terminated contractor or subcontractor;

(c) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(d) The amount and number of the replacement contract, if any; and

(e) A description of the work.