

Issued by Purchasing/Property Governance – DGP-7


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SUBJECT: BPI UPDATE 14-3, EFFECTIVE DATE 10/15/14

An online copy of the Bonneville Purchasing Instructions (BPI) is available at <http://www.bpa.gov/Doing%20Business/purchase/Pages/default.aspx>. The online BPI is a conformed copy with all changes included as of the current date and is effective until superseded.

SUMMARY OF SUBSTANTIVE CHANGES:

Topic	BPI Section	Change	Clauses
CO Certification	BPI Part 2 BPI App-2 BPI App-2 Attachment 1 Warrant Request Form	Updated certification training requirements, experience and continuous learning requirements.	N/A
Drug-Free Workplace	BPI 3.6.1(b)	Corrected threshold in policy text to \$150,000.	N/A
Labor Laws	BPI Part 10 BPI App.10-A-Deleted Alignment with revised Part 10: <ul style="list-style-type: none"> • BPI Intro • BPI 7.1.2 • BPI 7.1.10 • BPI 23.1.7 • BPI 24.3 • BPI 25.3 • BPI 28.1.4 	<p>Part 10 Labor Laws was clarified to align contract clauses with statutory, regulatory and executive order requirements. Additionally, Part 10 was restructured to identify requirements applicable to all contracts (general labor requirements), to service contracts, and to construction contracts with clarified clause usage prescriptions. Appendix 10-A has been deleted.</p> <p>New sections were added to Part 10 addressing age discrimination, overtime compensation, wage determinations, combating trafficking in persons, and child labor requirements, applicable to all procurement contracts.</p> <p>New and revised BPI clauses addressing equal opportunity, affirmative action for workers with disabilities, overtime compensation</p>	<p><u>Revised clauses and clause usage prescriptions:</u></p> <p>10-1 Equal Opportunity 10-2 Affirmative Action for Workers with Disabilities 10-3 Service Contract Labor Standards 10-4 Fair Labor and Service Contract Labor Standards- Price Adjustment 10-5 Service Contract Act Wage Determination 10-7 Construction Wage Rate Requirements 10-8 Withholding-Labor Violations 10-9 Payrolls and Basic Records 10-10 Apprentices, Trainees and Helpers 10-11 Subcontracts (Labor Standards) 10-12 Certification of Eligibility 10-13 Construction Wage Determination 10-14 Approval of Wage Rates 10-15 Pre-Award On-Site Equal Opportunity Compliance Review 10-16 Affirmative Action Compliance Requirements for Construction 10-17 Equal Opportunity Preaward Clearance of Subcontracts</p>

		<p>requirements, compliance with Copeland Act, child labor and trafficking in persons prohibitions, termination and debarment.</p> <p>Revised clause applicability thresholds for Equal Opportunity, affirmative Action for Workers with Disabilities and Affirmative Action Compliance Requirements for Construction.</p> <p>Updated references to Service Contract Act and Davis-Bacon Act to reflect current references in Title 40 and Title 41.</p>	<p>10-18 Employment Eligibility Verification</p> <p><u>New clauses and clause usage prescriptions:</u></p> <p>10-21 Contract Work Hours and Safety Standards Act-Overtime Compensation</p> <p>10-23 Compliance with Copeland Act Requirements</p> <p>10-24 Child Labor-Cooperation with Authorities and Remedies</p> <p>10-25 Combating Trafficking in Persons</p> <p>10-26 Contract Termination-Debarment</p> <p>10-27 Disputes Concerning Construction Labor Standards</p> <p>10-28 Minimum Wage for Federal Contracts</p> <p>10-29 Construction Wage Rate-Price Adjustment (None or Separately Specified Method)</p> <p>10-30 Construction Wage Rate-Price Adjustment (Percentage Method)</p> <p>10-31 Construction Wage Rate-Price Adjustment (Actual Method)</p> <p><u>The following clauses were revised to align with Part 10:</u></p> <p>7-2 Price Adjustment</p> <p>23-5 Nondisplacement of Qualified Workers</p> <p>28-20 Requirements Unique to Government Contracts</p>
Contract Extension Approval	BPI 14.10.4	Clarified existing policy that contracts cannot be extended if expired more than six months. Contract extensions must comply with BPA's competition requirement.	N/A
Taxes	BPI 22.5.2 BPI 22.5.3	Clarified tax policy and procedures regarding contractor purchase of goods and services for use on BPA contracts.	N/A
Accelerated Payments to Small Business Primes and Subcontractors	BPI 22.7	Revised policy to require accelerated payment to small business subcontractors.	<p><u>New clause and clause usage prescription:</u></p> <p>22-21 Acceleration of Payments to Small Business Subcontractors</p>
Period of Performance for Commercial Acquisitions	BPI 28.3.3	Period of performance for commercial acquisitions has been changed to five years.	<p><u>Revised clause usage prescriptions:</u></p> <p>28-1.1 through 1.5 Basic Terms</p>

Details of Substantive Changes and Instructions to the COs

1. **CO Certifications:** Required training, experience and continuous learning requirements have been updated in BPI Part 2 and Appendix 2-A as follows:

- Training courses have been updated to reflect current course offerings through the Federal Acquisition Institute and outside training providers.
- Experience requirement for Certification Levels 2 and 3 have been revised to two years and four years respectively.
- The continuous learning requirement becomes mandatory on the effective date of this transmittal. Continuous learning requirement has been revised to require **40 points** of mandatory training every two years for nominal certification holders, and **80 points** of mandatory training every two years for all other certification holders. See definition of “points” in Attachment 1.
- CO Certifications submitted after the effective date of this transmittal shall comply with the revised requirements. Certifications issued prior to the effective date of this transmittal will be transitioned at their current level of certification. Training courses taken prior to October 15, 2014 cannot be comingled or combined at the same certification level as training courses taken prior to October 15, 2014. Current certification holders who have to take courses in the new curriculum may have to take additional courses due to prerequisite requirements.

CO Warrants: The warrant request form in BPI Part 2 has been updated to reflect that warrants are issued with a combined authorization for supplies and services rather than identifying differing authorization amounts for supplies versus services. CO warrants will be updated as new warrant requests are received from SCS. Existing warrants remain in effect for separate supplies and services authorities.

Instructions to the CO: Current certification holders have until October 14, **2016** to complete the mandatory continuous education requirement implemented by BPI Update 14-3. A new warrant request must be submitted by the CO’s manager to request a combined supplies and services warrant. Warrants will not be automatically converted to a combined supplies and service authority.

2. **Part 10 Labor Law:**

Part 10 has been updated and restructured to clarify which federal labor requirements are required for all solicitations and contracts and which are applicable to service and construction contracts.

- References, policy, clause usage prescriptions, and clause titles in the BPI have been updated to align with changes to Title 40 and Title 41:
 - Davis-Bacon Act has been renamed as the Construction Wage Rate Requirements statute.
 - Service Contract Act has been renamed as the Service Labor Standards statute.
- Appendix 10 has been deleted. Policy requirements in Appendix 10 have been moved into Part 10. For procedures and regulations relating to federal labor law requirements, contracting officers are directed to the Department of Labor website at www.dol.gov.
- Notice and poster requirement: Contractors have an affirmative obligation to post notices required by Department of Labor. Failure to comply with DOL requirements constitutes breach of the BPA contract. CO should direct Contractor to Department of Labor webpage for copies of required posters and shall provide hard copies upon contractors’ request.
- Wage determinations:
 - Wage determinations must be identified and incorporated by reference in contracts subject to the Service Contract Labor Standards statute and the Construction Wage Determination Requirements statute using Clause 10-5 Service Contract Wage Determination or Clause 10-13 Construction Wage Determination. Current and archived wage determinations are available on-line at the Department of Labor website.
 - New construction wage rate price adjustment clauses have been added to Part 10.

- The contracting officer must notify the HCA and Chief Supply Chain Officer prior to investigating, or attempting to resolve complaints or issues related to labor policies, or transmitting any findings or statements to the Department of Labor.
- New and clarified policies: New BPI policy on age discrimination, trafficking in persons, child labor, Copeland Act, contract termination and debarment, disputes under construction contracts. Clarified policy and clauses that debarment and suspension officials and related procedures are DOE's debarment and suspension officials and procedures, not BPA's.
- Clauses:
 - New clauses addressing executive orders, federal statutes and implementing regulations for:
 - Clause 10-1 Equal Opportunity
 - Clause 10-2 Affirmative Action for Workers with Disabilities
 - Clause 10-21 Overtime Compensation
 - Clause 10-23 Copeland Anti-Kickback Act
 - Clause 10-24 Child Labor-Cooperation with Authorities and Remedies
 - Clause 10-25 Combating Trafficking in Persons
 - Clause 10-26 Contract Termination and Debarment
 - Clause 10-27 Disputes Concerning Labor Standards
 - Clause 10-28 Minimum Wage for Federal Contracts
 - Clause 10-29 Construction Wage Determination Adjustments (None or Separately Specified Method)
 - Clause 10-30 Construction Wage Determination Adjustments (Percentage Method)
 - Clause 10-31 Construction Wage Determination Adjustments (Actual Method)
 - Modified clauses:
 - Clause 10-3 Service Contract Labor Standards (re-titled)
 - Clause 10-4 Fair Labor and Service Contract Labor Standards-Price Adjustment (re-titled)
 - Clause 10-5 Service Contract Wage Determination (re-titled)
 - Clause 10-7 Construction Wage Rate Requirements (re-titled)
 - Clause 10-13 Construction Wage Determination (re-titled)
 - Clause applicability thresholds have been revised for the following clauses:
 - Clause 10-1 Equal Opportunity shall be included in solicitations and contracts exceeding \$10,000.
 - Clause 10-2 Affirmative Action for Workers with Disabilities shall be included in solicitations and contracts exceeding \$15,000.
 - Clause 10-16 Affirmative Action Compliance Requirements for Construction shall be included in solicitations and contracts exceeding \$10,000. Additionally the subcontract requirement in the clause text has been revised from \$35,000 to \$10,000.

Instructions to COs:

COs shall include the new and revised Part 10 clauses in solicitations and contracts issued after the effective date of this transmittal. Existing contracts with a period of performance extending past January 1, 2015 shall be modified to include the new and revised clauses upon the next modification or amendment.

3. Part 14 Contract Extensions: BPI 14.10.4 policy and procedure on contract extensions have been clarified. Contracts may be extended through bilateral mutual agreements provided such extension complies with BPA's competition requirement. Contracts expired less than three months may be extended by COs without HCA approval. Extensions of contracts expired in excess of three months but less than six months must be approved by the HCA. Contracts expired more than six months must be re-competed and/or a new contract issued.

Instructions to the CO: This is a policy change with no new contract clauses. Existing contracts shall be monitored in a manner to which complies with BPI 14.10.4.

4. Part 22 Payment and Taxes:

BPI 22.5.2 and 22.5.3 have been clarified regarding contractor's tax liability and exemptions when purchasing goods and services for use on a BPA contract. Contractors shall independently determine their sales and use tax liabilities and exemptions. No new contract clauses are associated with this change.

BPI Part 22 was revised to add a new policy and clause addressing accelerating payments to small business subcontractors as required under OMB Memorandum M-12-16. Prime contractors are required to pay small business subcontractors on an accelerated basis to the maximum extent practicable.

Instructions to the CO: Solicitations and contracts issued after the effective date of this transmittal shall include new BPI Clause 22-21 Accelerated Payments to Small Business Subcontractors. Clause 22-21 shall be included in existing contracts upon the next modification if there are, or if there is the possibility of, small business subcontracts under the subject contract.

5. Part 28 Commercial Acquisitions Period of Performance: The period of performance for commercial acquisitions has been changed from three years to five years, including options. This revised policy applies to contracts issued after the effective date of this transmittal as well as to existing contracts to the extent that BPA's competition requirement must be met prior to any contract modification extending the period of performance. Extensions of the period of performance beyond an existing contract's original three years in order to receive and accept a deliverable or pay an invoice would not violate BPA's competition requirement. The CO is reminded that options must be pre-priced and that the CO must verify that the pricing represents a best buy for BPA prior to exercising options.

Instructions to the CO: Solicitations and contracts for commercial acquisitions issued after the effective date of this transmittal are subject to the five year limitation as stated in BPI 28.3.3. For existing contracts, the period of performance may be extended to five years without HCA approval, provided BPA's competition requirement has been met.