

agreement is warranted, using the procedures in 22.2004-2(b)(7) introductory paragraph and (b)(7)(i), appropriately modifying the content of the notification to the particular postaward circumstances (e.g., change the time in paragraph 2004-2(b)(7)(i)(D) to “within six months of the notice”); and

(ii) Notify the ALCA of the date the notice was provided to the contractor; and notify the ALCA if the contractor fails to respond by the stated deadline or indicates that it does not intend to negotiate a labor compliance agreement.

(2) Elect not to exercise an option (see 17.207(c)(8)).

(3) Terminate the contract in accordance with the procedures set forth in part 49 or 12.403.

(4) In accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), notify the agency suspending and debarbing official if the labor law violation(s) merit consideration; and

(ii) Place any ALCA written analysis in the contract file with an explanation of how it was considered.

(5) If the contractor enters into a labor compliance agreement, the entry shall be noted in FAPIIS by the ALCA.

22.2004-4 Contractor preaward and postaward assessment of a subcontractor’s labor law violations.

(a) The provision at 52.222-58, Subcontractor Responsibility Matters Regarding Compliance with Labor Laws (Executive Order 13673), and the clause at 52.222-59, Compliance with Labor Laws (Executive Order 13673), have requirements for preaward subcontractor labor law decision disclosures and semiannual postaward updates during subcontract performance, and assessments thereof. This requirement applies to subcontracts at any tier estimated to exceed \$500,000, other than for commercially available off-the-shelf items.

(b) If the contractor notifies the contracting officer of a determination and rationale for proceeding with subcontract award under 52.222-59(c)(5), the contracting officer should inform the ALCA.

22.2005 Paycheck transparency.

E.O. 13673 requires contractors and subcontractors to provide, on contracts that exceed \$500,000, and subcontracts that exceed \$500,000 other than for commercially available off-the-shelf items—

(a) A wage statement document (e.g., a pay stub) in every pay period to all individuals performing work under the contract or subcontract, for which the contractor or subcontractor is required to maintain wage records under the Fair Labor Standards Act (FLSA), Wage Rate Requirements (Construction) statute, or Service Contract Labor Standards statute. The clause at 52.222-60 Paycheck Transparency (Executive Order 13673) requires certain content to be provided in the wage statement; and

(b) A notice document to all individuals performing work under the contract or subcontract who are treated as independent contractors informing them of that status (see 52.222-60). The notice document must be provided either—

(1) At the time the independent contractor relationship with the individual is established; or

(2) Prior to the time that the individual begins to perform work on that Government contract or subcontract.

22.2006 Arbitration of contractor employee claims.

E.O. 13673 requires contractors, on contracts exceeding \$1,000,000, to agree that the decision to arbitrate claims arising under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, be made only with the voluntary consent of employees or independent contractors after such disputes arise, subject to certain exceptions. This flows down to subcontracts exceeding \$1,000,000 other than for the acquisition of commercial items.

22.2007 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.222-57, Representation Regarding Compliance with Labor Laws (Executive Order 13673), in solicitations that contain the clause at 52.222-59.

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(b) For solicitations issued on or after October 25, 2017, the contracting officer shall insert the provision at 52.222–58, Subcontractor Responsibility Matters Regarding Compliance with Labor Laws (Executive Order 13673), in solicitations that contain the clause at 52.222–59.

(c) The contracting officer shall insert the clause at 52.222–59, Compliance with Labor Laws (Executive Order 13673)—

(1) In solicitations with an estimated value of \$50 million or more, issued from October 25, 2016 through April 24, 2017, and resultant contracts; and

(2) In solicitations that are estimated to exceed \$500,000 issued after April 24, 2017 and resultant contracts.

(d) The contracting officer shall, beginning on January 1, 2017 insert the clause at 52.222–60, Paycheck Transparency (Executive Order 13673), in solicitations if the estimated value exceeds \$500,000 and resultant contracts.

(e) The contracting officer shall insert the clause at 52.222–61, Arbitration of Contractor Employee Claims (Executive Order 13673), in solicitations if the estimated value exceeds \$1,000,000, other than those for commercial items, and resultant contracts.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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Subpart 23.9—Contractor Compliance With Environmental Management Systems

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