

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 22, 52, and 53****[FAR Case 2002-004]****RIN 9000-AJ79****Federal Acquisition Regulation; Labor  
Standards for Contracts Involving  
Construction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the revised definitions of "Construction" and "site of the work" in the Department of Labor (DoL) regulations. In addition, the Councils are proposing to clarify several definitions relating to labor standards for contracts involving construction and make requirements for flow down of labor clauses more precise.

**DATES:** Interested parties should submit comments in writing on or before February 23, 2004, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to—[farcase.2002-004@gsa.gov](mailto:farcase.2002-004@gsa.gov). Please submit comments only and cite FAR case 2002-004 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR case 2002-004.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Department of Labor (DoL) published a final rule at 65 FR 80268, December 20, 2000, revising the terms "construction, prosecution, completion, or repair" (29 CFR 5.2(j)) and "site of the work" (29 CFR 5.2(l)). The DoL rule became effective on January 19, 2001. The DOL changes were made to conform

the regulations with Federal appellate court decisions and subsequent decisions of DoL's Administrative Review Board regarding the transportation of supplies and materials to or from the construction site. In addition, the DoL rule revised the definition of the "site of the work" to include secondary sites, other than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed. The Councils propose revisions to the definitions of "construction, alteration, or repair" and "site of the work" in 22.401, to reflect the changes in the DoL regulations. A new provision at 52.222-XX, Davis-Bacon Act—Secondary Site of the Work, is proposed to regulate potential situations where an offeror intends to perform significant portions of the building or work at a secondary site outside the primary site of the work and for which the wage determination provided by the Government for work at the primary site is not applicable.

The proposed revision to the Davis-Bacon Act clause at FAR 52.222-6 mandates that any subsequent incorporation to the contract of a wage determination for a secondary site shall become retroactively effective from the first day work under the contract was performed at that site, without any adjustment in contract price or estimated cost. This is based on the premise that secondary sites are initiatives of the offeror that can be instituted before or after contract award. The proposed rule also specifies that whenever there is transportation of portions of the building or work between the secondary site and the primary site of the work, the applicable wage determination that would prevail shall be for the primary site of the work. This decision was made in accordance with the DoL's administrative determination as outlined in the **Federal Register** at 65 FR 80276.

The Councils also proposed to revise the Davis-Bacon Act clause to establish that any wage determination for a secondary site shall be posted both at the primary site of the work and at the secondary site of the work. The Councils are proposing to include DoL's revised definition of "site of the work" in the Davis-Bacon Act clause.

In addition, the Councils are proposing editorial changes to other definitions in this section. Specifically, the definitions of "apprentice" and "trainee" have been listed separately in the alphabetical list of definitions rather than as a subcategory of "laborer and

mechanic." Also the terms "building or work" and "public building or public work" have been combined into a single term of "building or work" and "public building or public work" for definitional purposes. No substantive change is intended with these editorial changes.

The Councils propose revisions to the clause at 52.222-11, Subcontracts (Labor Standards), to clarify that it flows down only to subcontracts for construction within the United States, and that the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation" does not flow down unless included in the contract. This change is necessary because the coverage threshold for the Contract Work Hours and Safety Standards Act is \$100,000 and the threshold for the Davis-Bacon Act is \$2,000. Thus for construction contracts of \$100,000 or less, the Contract Work Hours and Safety Standards Act clause is not included in the contract and therefore would not flow down to any subcontract. If the construction contract is in excess of \$100,000, then the clause flows down to subcontracts that may require or involve the employment of laborers and mechanics including watchmen and guards without regard to the value of the subcontract. The clause at 52.222-4 is being revised to reflect this principle.

The Councils have also proposed changes to the Standard Form 1413, Statement and Acknowledgment, to require that the contractor state whether its contract contains the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation," so that the subcontractor certification will only cover this clause if the contractor has indicated that the clause is in its contract. In addition, the Councils have proposed corrections to two of the clause titles and added to the list the clause entitled "Compliance with Davis-Bacon and Related Act Regulations," which is one of the clauses for which certification is required (29 CFR 5.6(a)).

A correction is proposed to FAR 22.406-9(c). That section was incorrectly changed by FAR Case 1999-003, published in the **Federal Register** at 65 FR 46064, July 26, 2000, by redirecting the transfer of withheld funds under the Davis-Bacon to the Secretary of the Treasury instead of the Comptroller General of the General Accounting Office (GAO). Section 3(a) of the Davis-Bacon Act specifically, provides that "the Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments