



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

November 16, 2009

MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM:

Thomas A. Sharpe, Jr.
Senior Procurement Executive

SUBJECT:

Class Deviation from the Federal Acquisition Regulation (FAR),
FAR Clause 52.222-8, Payrolls and Basic Records

Effective as of the date of this memorandum, all Treasury Bureau Procurement Offices are authorized to deviate from the clause at 52.222-8 of the FAR, and are required to insert the attached revised text of clause 52.222-8 in contracts and solicitations in lieu of the current FAR text.

The U.S. Department of Labor (DOL) revised its regulations effective January 18, 2009 to provide better protection for the personal privacy of laborers and mechanics employed on covered construction contracts. The revisions changed the prior requirement that contractors include the full social security numbers and home addresses of the contractor employees on weekly transmittals of payrolls. Instead, the revised DOL regulation requires that weekly payroll submissions only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).

The attached revised text contains changes to subparagraph (b)(1) of FAR clause 52.222-8:

- Full social security numbers and home addresses shall not be included on contractor weekly transmittals of payroll information. Instead, an individually identifying number for each employee is required.
- Instead of an address for ordering Optional Form 347, a DOL website is provided as the source for download of Optional Form 347.
- Additional text is provided which contains the requirements that contractors and subcontractors must maintain the full social security number and current address of each covered worker and must provide this information upon request for purposes of investigation or audit, and that it is not a violation of this FAR section for prime contractors to require a subcontractor to provide addresses and social security numbers to the prime contractor.

The remaining paragraphs of the revised text of FAR 52.22-8 are the same as the current FAR text.

This class deviation remains effective until such time as the FAR is amended to incorporate the changes to DOL's regulation.

DEPARTMENT OF THE TREASURY
Class Deviation from FAR 52.222-8
Revised Text

FAR 52.222-8 Payrolls and Basic Records.

As prescribed in FAR 22.407(a), insert the following clause:

PAYROLLS AND BASIC RECORDS (OCT 2009)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually indentifying number of each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/esa/whd/forms/wh347.pdf> or its successor site. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full

social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to

interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)