



NOV 02 2009

PROCUREMENT MEMORANDUM 2010-01

ACTION

**MEMORANDUM FOR: BUREAU PROCUREMENT OFFICIALS
HEADS OF CONTRACTING OFFICES**

FROM: Helen Hurcombe *Helen Hurcombe*
**Senior Procurement Executive
and Director for Acquisition Management**

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

Background

The Department of Labor (DOL) issued a final rule (73 Federal Register 77504) on December 19, 2008 removing the prior requirement that Contractors include the full social security numbers and home addresses of employees on the required weekly payroll submissions to the Contracting Officer. The DOL rule revises regulations issued pursuant to the Davis-Bacon and related Acts and the Copeland Anti-Kickback Act to better protect the personal privacy of laborers and mechanics employed on covered construction contracts. The specific Davis Bacon Act revisions changed the prior requirement for contractors to submit weekly payrolls in accordance with 29 CFR 5.5 (a)(3)(i), to include the full social security numbers and home addresses of the Contractor employees on weekly transmittals. Instead the revised DOL regulations require that weekly payroll submissions only need include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).

The DOL revisions also provide that Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and provide that information upon request of the Contracting Officer, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. The DOL revisions further provide that it is not a violation of 29 CFR 5.5(a)(3)(i), 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.

Civilian agencies were advised by the General Services Administration (GSA), Civilian Agency Acquisition Council (CAAC) Chairperson, via CAAC Letter 2009-

02, that paragraph (b)(l) of FAR Clause 52.222-8, Payrolls and Basic Records, should be amended to reflect the DOL revisions.

Purpose

The purpose of this Procurement Memorandum is to issue a Class Deviation from FAR Clause 52.222-8, Payrolls and Basic Records. The deviation (Attachment A) is effective upon signature and remains in effect until incorporated into the FAR.

Actions Required

- Contracting Officers must include the clause deviation in solicitations and contracts in excess of \$2,000 for construction in the United States, as prescribed in FAR 22.407(a).
- Contracting Officers may modify existing contracts consistent with FAR 1.108(d), Application of FAR changes to solicitations and contracts.

Questions regarding this class deviation should be directed to Nancy Barrere at Nbarrere@doc.gov or (202) 482-5519.

Attachment: Class FAR Deviation, FAR 52.222-8, Payrolls and Basic Records

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

Determination and Findings

Under the authority granted by Civilian Agency Acquisition Council (CAAC) Letter 2009-02, Consultation for Class Deviations – FAR 52.222-8, Payrolls and Basic Records, the Department of Commerce has authorized a class deviation from the Federal Acquisition Regulation (FAR) Clause 52.222-8, to implement revisions published by the Department of Labor (DOL) (73 FR 77504).

Findings

On December 19, 2008, DOL published a final rule in the Federal Register revising regulations regarding Davis-Bacon and Related Acts and the Copeland Anti-Kickback Act to better protect the privacy of laborers and mechanics employed on covered contracts. The revised DOL regulation requires that weekly payroll submissions only need to include an individually identifying number for each contractor employee, rather than the full social security number and home address of each employee, as the FAR clause now requires. Until the FAR is changed to reflect the revised DOL regulations, a class deviation is being issued to replace the clause paragraph (b)(1) that requires personally identifiable information to be provided in the weekly payroll submission.

Determination

In accordance with FAR 1.404, I hereby authorize a class deviation from FAR Clause 52.222-8, Payrolls and Basic Records. Contracting Officers must include the clause deviation (attached) in solicitations and contracts in excess of \$2,000 for construction in the United States, as prescribed in FAR 22.407(a). Consultation and approval for this class deviation is granted under CAAC Letter 2009-02. This class deviation shall remain in effect until cancelled or superseded by a revision to the FAR.



Helen Hurcombe
Senior Procurement Executive and
Director for Acquisition Management

11/1/2009
Date

52.222-8 Payrolls and Basic Records

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

Payrolls and Basic Records (DEVIATION)(OCTOBER 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 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)(1), 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 identifying number for 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 site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. The 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 subparagraph (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)